

2577
No. 9413

United States
Circuit Court of Appeals
For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

CHARLES LAUGHTON,
Respondent.


Transcript of the Record
In Two Volumes
VOLUME I
Pages 1 to 237

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

FILED

FEB 13 1940

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

HERSCHEL B. GREEN, Esq.,
LOYD WRIGHT, Esq.,

For Comm'r.:

D. M. EVANS, Esq.,
A. C. BAIRD, Esq.,

Docket No. 88104

CHARLES LAUGHTON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1937

Feb. 12—Petition received and filed. Taxpayer notified. (Fee paid)

“ 13—Copy of petition served on General Counsel.

Mar. 26—Amended petition filed by taxpayer. 3/27/37 copy served.

Apr. 5—Answer to amended petition filed by General Counsel.

“ 8—Copy of answer served on taxpayer.

Jul. 20—Hearing set week beginning Sept. 27, 1937 at Los Angeles, Calif.

1937

Sep. 27—Hearing had before Mr. Mellott, Div. 11.
Motion of petitioner to continue granted.
Proceeding continued.

“ 27—Order of continuance to next Circuit Calendar at Los Angeles, California entered.

1938

Apr. 6—Hearing set June 13, 1938, at Los Angeles, Calif.

Jun. 27—Hearing had before Mr. Arnold, Div. 12 on the merits. Submitted. Stipulation of facts filed at hearing. Petitioner's brief due July 27, 1938—respondent's due August 26, 1938—reply due September 10, 1938.

Jul. 11—Transcript of hearing of June 27, 1938 filed.

“ 25—Brief filed by taxpayer. 7/25/38 copy served.

Aug. 26—Brief filed by General Counsel.

Sep. 7—Reply brief filed by taxpayer. 9/7/38 copy served.

1939

Jun. 15—Findings of fact and opinion promulgated, Wm. W. Arnold, Div. 12. Decision will be entered under Rule 50.

Aug. 3—Computation of deficiency filed by General Counsel.

“ 7—Hearing set Sept. 13, 1939 on settlement.

Sep. 6—Consent to settlement filed by taxpayer.

1939

Sep. 11—Decision entered, William W. Arnold,
Div. 12.

Nov. 17—Stipulation of venue filed.

“ 28—Petition for review by U. S. Circuit Court
of Appeals (9) with assignments of error
filed by General Counsel.

Dec. 7—Proof of service filed by General Counsel.
(2) Attorney & taxpayer.

“ 21—Agreed statement of evidence lodged.

“ 21—Agreed praecipe filed by General Counsel.
Proof of service thereon.

“ 22—Agreed statement of evidence approved
and ordered filed.

“ 26—Certified copy of order from the 9th Cir-
cuit that Exhibits B & C attached to the
stipulation of facts, which exhibits are
to be specified in the designation of con-
tents of record, need not be printed in the
record and the Clerk of the U.S. Board of
Tax Appeals be directed to transmit the
original of said exhibits to the Clerk of
the Circuit Court to be produced at the
hearing filed.

“ 27—Statement of points filed by General
Counsel. Proof of service thereon. [1*]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

United States Board of Tax Appeals

Docket No. 88104

CHARLES LAUGHTON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT:C:4-JHL-90D) dated November 28, 1936 and as a basis of his proceeding alleges as follows:

1. The petitioner is a non-resident alien with address care of Myron Selznick & Company, Inc. at 9460 Wilshire Boulevard, Beverly Hills, California.

2. The notice of deficiency, a copy of which is attached and marked "Exhibit A" was mailed to the petitioner on November 28, 1936.

3. The taxes in controversy are income taxes for the calendar years 1934 and 1935 and for \$23,160.03 and \$81,270.84 respectively. [2]

4. The determination of tax set forth in the notice of deficiency is based upon the following errors:

(a) The respondent erred in determining that the amounts received by Motion Picture

& Theatrical Industries, Ltd. in 1934 and 1935, as consideration for the services of Charles Laughton rendered to Metro-Goldwyn-Mayer Corporation, Twentieth Century Pictures, Inc. and Paramount Productions, Inc., constituted income taxable to Charles Laughton.

(b) The respondent erred in determining that the gross income of Charles Laughton, from sources within the United States for 1934, was in excess of \$32,811.66.

(c) The respondent erred in determining that the gross income of Charles Laughton, from sources within the United States for 1935, was in excess of \$22,419.09.

(d) The respondent erred in disallowing deductions for expenses paid by petitioner in 1934 amounting to \$1,259.47.

(e) The respondent erred in disallowing deductions for expenses paid by petitioner in 1935 amounting to \$1,473.32.

(f) The respondent erred in failing to allow deductions for 1934 in respect of the following expenses:

Agents' commissions	\$8,433.32
Legal fees and expenses.....	5,271.83
Accountant's fees	225.00
Advertising	336.70
Miscellaneous expense22
	<u> </u>

(g) The respondent erred in failing to allow deductions for 1935 in respect of the fol-

lowing expenses:

Agents' commissions	\$19,921.23
Legal fees and expenses.....	3,403.32
Accountant's fees	40.00
Advertising	777.50
Miscellaneous expense	<u>51.09</u>

(h) The respondent erred in failing to allow a credit of \$1,000 for personal exemption for 1935. [3]

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner is a subject of Great Britain and maintains his residence in that country.

(b) Petitioner is a motion picture actor of some prominence in both Great Britain and the United States, taking part in pictures produced in each of these countries from time to time.

(c) Under date of May 4, 1934 petitioner entered into a contract with Motion Picture & Theatrical Industries, Ltd., an English corporation, under the terms of which Motion Picture & Theatrical Industries, Ltd. was to have exclusive rights to his services for a period of five years at a stipulated weekly salary, with the right to sublicense and loan his services to others.

(d) After May 4, 1934 Motion Picture & Theatrical Industries, Ltd. entered into agreements with producing companies for petitioner's services and collected the agreed remuneration under these agreements.

(e) Petitioner was paid his alleged salary by Motion Picture & Theatrical Industries, Ltd. from May 4, 1934 to December 31, 1934 and throughout the year 1935.

(f) The income paid to Motion Picture & Theatrical Industries, Ltd. by the producing companies was reported as taxable income by that corporation and Federal income tax paid thereon.

(g) During 1934 and 1935 the petitioner incurred expenses in connection with the earning of his income as follows:

	<u>1934</u>	<u>1935</u>
Automobile	\$ 677.06	\$ 778.99
Gratuities	200.00	
Wardrobe	186.71	399.59
Telephone and telegrams.....	59.05	294.74
Music	71.25	
Books and periodicals.....	130.80	
	<hr/>	<hr/>
Totals.....	<u>\$1,324.87</u>	<u>\$1,473.32</u>

[4]

The respondent has disallowed certain of these expenses aggregating \$1,259.47 for 1934 and all of these expenses for 1935.

(h) During the years 1934 and 1935 Motion Picture & Theatrical Industries, Ltd. paid expenses as listed below which would have required to have been paid by petitioner if he had contracted directly with the producing companies:

	<u>1934</u>	<u>1935</u>
Agents' commissions	\$8,433.32	\$19,921.23
Legal fees and expenses.....	5,271.83	3,403.32
Accountant's fees	225.00	40.00
Advertising and publicity.....	335.70	777.50
Miscellaneous	<u>.22</u>	<u>51.09</u>

Wherefore, the petitioner prays that this Board may hear the proceedings and determine:

- (a) That there is no deficiency for 1934 or 1935
- (b) Such other and further relief as this Board may deem proper.

HERSCHEL B. GREEN

LOYD WRIGHT and

HERSCHEL B. GREEN

Attorneys for Petitioner

111 West Seventh Street

Los Angeles, California

L. G. SUTHERLAND

Agent for Petitioner

American Security Building

Washington, D. C.

Washington, D. C.

March 23, 1937 [5]

State of California

County of Los Angeles—ss.

Loyd Wright, being duly sworn, deposes and says that he is a duly appointed attorney in fact for Charles Laughton, the petitioner named in the

foregoing petition; that Charles Laughton is absent from the United States; that he is duly authorized under the power of attorney, which has not been revoked and copy of which is attached, to verify the foregoing petition; that he has read the petition and is familiar with the statements contained therein and believes the facts stated therein to be true; that his knowledge of the facts alleged in the foregoing petition is grounded on: (1) information in his possession, (2) conversations with the petitioner, (3) information furnished by Myron Selznick & Company, Inc., and (4) information furnished by an officer and director of Motion Picture & Theatrical Industries, Ltd.

LOYD WRIGHT

Subscribed and sworn to before me this 23rd day of March 1937.

[Seal]

ANITA GARRETT

Notary Public in and for the County of Los Angeles, State of California. [6]

POWER OF ATTORNEY

Be It Known:

That I, Charles Laughton, from time to time temporarily residing in the County of Los Angeles, State of California, have made, constituted and appointed, and by these presents Do Make, Constitute and Appoint, Loyd Wright, of Los Angeles,

California, or alternatively any partner of his (present or future) being a counsellor-at-law, My True and Lawful Attorney for me and in my name and on my behalf, to act, demand, recover and receive all sums of money, debts, dues, accounts, interest, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me, and have, use and take all lawful ways and means in my name or otherwise for the recovery thereof, by attachments, arrests, distress or otherwise, and to compromise and agree for the same, and acquittances and other sufficient discharges for the same, for me and in my name, to make seal and deliver and to make out, agree or agree to alterations in or compromises of accounts, invoices, returns, statements and other documents and instruments on my behalf or concerning me or my affairs.

Also, to make, do and transact all and every kind of business of what nature or kind soever and to undertake on my behalf the performance of service obligations or the variation or cancellation thereof, and to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses-in-action and other property in possession or in action, and also for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments

of leases, covenants, indentures, agreements, mortgages, hypothecations, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases and satisfaction of mortgages, judgments and other debts, and such other instruments in writing of whatsoever kind and nature, as may be necessary or proper in the premises, specifically granting, authorizing and empowering and directing the said Loyd Wright, or in substitution any partner of his as aforesaid, to sign any and all checks in my name, for me and in my behalf, and any bank or trust company is hereby authorized, directed and instructed to cash said checks in the same manner as if I myself had executed the same. I Hereby Confirm and Approve anything that the said Loyd Wright and/or any of his said partners may do in said respect on my behalf. [7]

Giving and Granting unto my said attorney Loyd Wright, and/or any partner of his, as aforesaid, Full Power and Authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney, Loyd Wright, or any partners of his as aforesaid, shall lawfully do or cause to be done by virtue of these presents.

Witness my hand and seal at London, England,
this 12th day of March, 1936.

CHARLES LAUGHTON

Signed, Sealed and Delivered
by above named Charles Laughton,
in the presence of:

F. M. GUEDALLA

7 Park Crescent,

Portland Place, London, Solicitor.

N. W. LAWRENCE,

Not. Pub., London, England.

NOTARY PUBLIC'S CERTIFICATE

To All To Whom These Presents Shall Come: I,
Nicasio Robert Jauralde of the City of London,
Notary Public duly admitted and sworn, Do Hereby
Certify, that on this twelfth day of March in the
year one thousand nine hundred and thirty-six
before me personally came Charles Laughton, to me
known and known to me to be the constituent named
in and who executed the foregoing Power of Attor-
ney, and he acknowledged to me that he executed
the same as his free and voluntary act and deed for
the uses and purposes therein set forth.

In Faith and Testimony whereof I have hereunto
set my Hand and Seal of Office at London this
twelfth day of March in the year of our Lord one
thousand nine hundred and thirty-six.

[Seal]

N. R. JAURALDE

Not. Pub. [8]

Great Britain & Northern Ireland
London, England
Consulate General of the
United States of America—ss.

I, Philip Adams, Consul of the United States of America, residing at London, England, do hereby make known and certify to all whom it may concern, that Nicasio Robert Jauralde, who hath signed the annexed Certificate, is a Notary Public duly admitted and sworn and practising in London, England, and that to all acts by him so done, full faith and credit are and ought to be given in Judicature and thereout.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of Official London afore-said, this Thirteenth day of March in the year of our Lord One Thousand Nine Hundred and Thirty-six.

Service No. 2540

Fee \$2—8/4

[Seal]

PHILIP ADAMS

Consul of the United States of America at London,
England. [9]

EXHIBIT A

Treasury Department

Washington

Nov. 28 1936

Office of

Commissioner of Internal Revenue

Mr. Charles Laughton,

c/o Frank Joyce-Myron Selznick, Ltd.,

9460 Wilshire,

Beverly Hills, California.

Sir:

You are advised that the determination of your income tax liability for the taxable years 1934 and 1935 discloses a deficiency of \$104,430.87 as shown in the statement attached.

In accordance with section 272(a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a re-determination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C1:P:7. The signing and filing of this form will expedite the closing of your returns by permitting an early

assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By CHAS. T. RUSSELL (Signed)

Deputy Commissioner.

Enclosures:

Statement

Form 870 [10]

STATEMENT

IT:C:4

JHL-90D

In re: Charles Laughton,
c/o Frank Joyce-Myron Selznick, Ltd.,
9460 Wilshire,
Beverly Hills, California.

INCOME TAX LIABILITY

Years	Income Tax Liability	Income Tax assessed	Deficiency
1934	\$25,841.87	\$2,681.84	\$23,160.03
1935	82,244.45	973.61	81,270.84

The report of the internal revenue agent in charge at Los Angeles, California, a copy of which was furnished you, is approved.

1934	
Net income shown by return.....	\$30,349.12
Add:	
1. Additional salary	61,781.14
Net income adjusted.....	\$92,130.26
Less: Personal exemption.....	1,000.00
Balance subject to surtax.....	\$91,130.26
Less:	
Earned income credit.....	1,400.00
Balance subject to normal tax.....	\$89,730.26
Normal tax at 4%.....	\$ 3,589.21
Surtax on \$91,130.26.....	23,565.13
Total tax	\$27,154.34
Less:	
Income tax paid at source.....	1,312.47
Total tax assessable.....	\$25,841.87
Income tax assessed:	
Original account No. 800665.....	2,681.84
Deficiency in income tax.....	\$23,160.03
[11]	
Earned income credit:	
Salaries	\$92,162.08
Earned net income limited to not less than \$3,000.00 taxable net income and not over \$14,000.00	\$14,000.00
Credit—10% of earned net income of \$14,000.00	\$ 1,400.00

Explanation of Change

1. Gross salary actually earned:	
Metro-Goldwyn-Mayer Studios	\$45,333.33
Paramount Studios	48,000.00
Total	\$93,333.33

Less:

Expense deductions	1,171.25
Net salary	\$92,162.08
Net salary reported.....	30,380.94
Additional salary	\$61,781.14

The salaries from the studios are considered as income earned for services performed during the year, which cannot be assigned, Court Decision 675, Cumulative Bulletin XII-1, page 207. From the expense deduction claimed in the amount of \$2,430.72, there has been disallowed the following:

(a) Auto expense	\$ 677.06
(b) Wardrobe	186.71
(c) Books and periodicals.....	65.40
(d) Telephone and telegraph.....	59.05
(e) Music	71.25
(f) Gratuities	200.00
Total	\$1,259.47

(a) The deduction claimed for automobile expense is disallowed for the reason that it is not supported by sufficient detail to permit a determination of whether the automobile was for personal use, or a necessary expense incident to the earning of the salaries. Article 23(a) Regulations 86. [12]

(b) The deduction claimed for wardrobe is disallowed for the reason that there are no details submitted showing that this constituted a necessary business expense. Article 23(a) Regulations 86.

(c) The deduction claimed for books and periodicals is disallowed to the extent of 50% of the amount claimed, representing a personal expense. Article 23(a), Regulations 86.

(d) Deduction for telephone is disallowed for the reason that such expense, other than personal, was paid by the agent or business manager. Article 23(a) Regulations 86.

(e) The deduction for music has been disallowed as a personal expense. Article 23(a) Regulations 86.

(f) Gratuities to stage hands are held to be personal expenses and disallowed. See decision in case of Reginald Denny, Vol. 33, United States Board of Tax Appeals, page 738.

1935	
Net income reported.....	\$ 19,797.40
Add:	
1. Additional salary	171,482.82
	<hr/>
Net income adjusted.....	\$191,280.22
Less:	
Personal exemption	583.34
	<hr/>
Balance subject to surtax.....	\$190,696.88
Less:	
Earned income credit.....	1,400.00
	<hr/>
Balance subject to normal tax.....	\$189,296.88
Normal tax at 4%.....	\$ 7,571.88
Surtax on \$190,696.88.....	75,569.35
	<hr/>
Total	\$ 83,141.23

Income tax paid at source.....	896.78
Total tax assessable.....	\$ 82,244.45
Previously assessed, August 1935, No. 234.....	973.61
Deficiency in income tax.....	\$ 81,270.84
	[13]

Earned income credit:

Salaries	\$191,486.22
Earned net income limited to not less than \$3,000.00 taxable net income and not over \$14,000.00.....	\$ 14,000.00
Credit—10% of earned net income of \$14,000.00	\$ 1,400.00

Explanation of Change

1. See explanation No. 1 for 1934.

Gross salary actually earned:

Metro-Goldwyn-Mayer Studios	\$118,428.59
Paramount Studios	9,000.00
Twentieth Century Pictures, Inc.....	65,000.00

Total\$192,428.59

Less:

 Expense deduction 942.37

Net salary\$191,486.22

Net salary reported..... 20,003.40

Additional salary\$171,482.82

The following expense deductions were disallowed:

(a) Auto expense	\$ 778.99
(b) Telephone and telegraph.....	294.74
(c) Wardrobe	399.59

Total\$1,473.32

Explanation of Changes

- (a) See Explanation (a) 1934
- (b) See Explanation (d) 1934
- (c) See Explanation (b) 1934

[Endorsed]: U.S.B.T.A. Filed March 26, 1937.

[Title of Board and Cause.]

ANSWER TO AMENDED PETITION

Now comes the Commissioner of Internal Revenue, by his attorney, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Admits the allegations contained in paragraph 2 of the amended petition.

3. Admits the allegations contained in paragraph 3 of the amended petition.

4(a) to (h), inclusive. Denies that the Commissioner's determination is erroneous as alleged in subparagraphs (a) to (h), inclusive, of paragraph 4 of the amended petition.

5(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the amended petition.

(c) to (f), inclusive. Denies the allegations contained in subparagraphs (c) to (f), inclusive, of paragraph 5 of the amended petition.

(g) Admits that respondent has disallowed certain claimed expenses aggregating \$1,259.47 for the year 1934 and \$1,473.32 for the year 1935; [15] denies the remaining allegations of fact contained in subparagraph (g) of paragraph 5 of the amended petition.

(h) Denies the allegations contained in subparagraph (h) of paragraph 5 of the amended petition.

6. Denies, generally and specifically, each and every allegation of the amended petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) MORRISON SHAFROTH

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

CHESTER A. GWINN,

CHARLES E. LOWERY,

Special Attorneys,

Bureau of Internal Revenue.

[Endorsed]: U.S.B.T.A. Filed Apr. 5, 1937. [16]

[Title of Board and Cause.]

Docket No. 88104. Promulgated June 15, 1939.

FINDINGS OF FACT AND OPINION

An English corporation organized to carry on motion picture, theatrical, and related businesses, the beneficial ownership of its stock being in the petitioner, a nonresident alien, contracted with petitioner for his exclusive services as an actor for a period of five years at a fixed weekly stipend. By virtue of loan contracts with Hollywood studios the

corporation realized substantial earnings during the taxable years 1934 and 1935 on its exclusive service contract with petitioner. Held, the amounts paid the corporation as consideration for the services of the petitioner under the loan agreements do not constitute taxable income to the petitioner.

JOHN B. MILLIKEN, Esq.,
HERSCHEL B. GREEN, Esq.,
and HARRIET GEARY, Esq.,
for the petitioner.
ALVA C. BAIRD, Esq.,
for the respondent.

This proceeding involves income tax deficiencies for the years 1934 and 1935 in the amount of \$23,160.03 and \$81,270.84, respectively. The principal issue is whether respondent erred in determining that the amounts received by Motion Picture & Theatrical Industries, Ltd., in 1934 and 1935, as consideration for the services of Charles Laughton rendered to Metro-Goldwyn-Mayer Corporation, Twentieth Century Pictures, Inc., and Paramount Productions, Inc., constituted income taxable to the petitioner. Certain alternative issues were raised by the pleadings, which need not be set forth in view of our decision on the principal issue.

FINDINGS OF FACT.

The petitioner, Charles Laughton, is a motion picture actor well known in both Great Britain and the United States. At all times pertinent to this

proceeding he was a subject of Great Britain and a resident of and domiciled in England.

On May 4, 1932, the petitioner executed a five-year contract with Frank Joyce-Myron Selznick, Ltd., which authorized them to act as his manager and personal representative. During 1932, the petitioner came to the United States and was engaged in making four pictures for the Paramount-Publix Corporation, predecessor of Paramount Productions, Inc. He also made one picture for the Universal Pictures Corporation during 1932 under a loan of his services by Paramount-Publix to Universal.

On March 29, 1933, the petitioner entered into a contract with Paramount Productions, Inc., hereinafter referred to as Paramount, under the terms of which one picture, "White Woman", was produced in that year. Paragraph Twelfth of said contract provided in part as follows:

The Artist hereby grants to the Corporation an option upon the Artist's exclusive services in one (1) motion picture photoplay to be produced between April 15, 1934, and September 15, 1934, at the salary and at the rate of Three Thousand (\$3,000.00) Dollars per week for not less than five (5) weeks for his services in such production.

Under date of September 15, 1933, Paramount notified the petitioner that it elected to exercise the foregoing option.

After completing the picture, "White Woman", the petitioner returned to England, and on April 30, 1934, a corporation bearing the name of "Motion Picture and Theatrical Industries, Limited," hereinafter referred to as Industries, Ltd., was organized under and by virtue of the laws of Great Britain, and specifically under the English Companies' Act of 1929. As set forth in its memorandum of association, the objects for which the company was established were to engage in the motion picture and theatrical businesses or any business incidental or related thereto.

The principal place of business of Industries, Ltd., has been at all times since its formation and now is London, England. During the taxable years it was managed by a board of directors composed of business men. The petitioner was not a member of the board of directors, nor was he an officer of the company, although he was the real beneficial owner of all its outstanding stock, except qualifying shares, for which he paid into the company £6,000 or approximately \$30,000.

On May 4, 1934, petitioner and Industries, Ltd., executed a contract in London, whereby, in return for the payment of £150 or approximately \$750 per week for the next five years thereafter, together with the payment of certain other expenses, petitioner agreed to give his sole and exclusive services to Industries, Ltd., subject always to the primary obligations of a contract entered into February 26,

1934, and then existing between petitioner and London Film Productions, Ltd., whereby petitioner was to make three pictures for the latter company. The petitioner agreed to assign the profits and any moneys arising from the latter agreement and his right to 10 percent of the gross receipts from the photoplay "The Private Life of Henry VIII" to [18] Industries, Ltd., as part of the consideration for the contract of May 4, 1934. Industries, Ltd., agreed to assume the obligations of the petitioner under his contract of May 4, 1932, with Frank Joyce-Myron Selznick, Ltd. Paragraph 15 of petitioner's agreement with Industries, Ltd., provided as follows:

Nothing in this Agreement shall be contrary to the proposition that from time to time it is contemplated that the Emperor itself will be engaging in motion picture or theatrical activities in the British Isles in connection with which it shall employ the Employee and in no case will it engage in any motion picture or theatrical activities in which there shall be a male principal part without employing the Employee in the enactment thereof unless the Employee expressly and in writing shall assent to the Employer in any such activities employing some other actor.

On May 5, 1934, petitioner sailed for the United States. On May 14 he reached Los Angeles and immediately commenced work as an actor in "The

Barretts of Wimpole Street" for Metro-Goldwyn-Mayer under a pending loan agreement which was finally executed between Metro-Goldwyn-Mayer and Industries, Ltd., on July 6, 1934. The agreement became effective as of May 14, 1934, provided for petitioner's appearance in "The Barretts of Wimpole Street" and "Marie Antoinette", and permitted him to appear in one photoplay for Paramount. Metro-Goldwyn-Mayer paid Industries, Ltd., for the services performed by the petitioner under the said loan agreement \$45,333.33 during 1934 and \$119,230.76 during 1935.

On July 5, 1934, the contract of March 29, 1933, between petitioner and Paramount was canceled by mutual consent, and on the same day Industries, Ltd., entered into an agreement with Paramount relative to the services of the petitioner. This contract and the contract of Industries, Ltd., with Metro-Goldwyn-Mayer were both acknowledged by petitioner in a separate writing, attached to each contract, wherein he obligated himself, individually, to render the services agreed upon by the studios and Industries, Ltd. Subsequent contracts and modifications of existing contracts for the loan of Laughton's services by Industries, Ltd., were likewise acknowledged by the petitioner.

Under the loan agreement with Paramount petitioner performed in "Ruggles of Red Gap", and Paramount paid Industries, Ltd., for such services the sums of \$48,000 in 1934 and \$6,000 in 1935.

On December 21, 1934, Industries, Ltd., contracted for the loan of Laughton's services to Twentieth Century Pictures, Inc. During 1935 Industries, Ltd., received \$65,000 from Twentieth Century Pictures, Inc., for the services rendered the latter company by petitioner.

Each of the three studios aforementioned deducted and withheld from the amounts that were to be paid to Industries, Ltd., the sums prescribed as income tax to be withheld at the source under the provisions of section 144, Revenue Act of 1934. The sums so deducted [19] were paid over to the collector of internal revenue by the studios in the amounts and for the years as follows:

	<u>1934</u>	<u>1935</u>
Metro-Goldwyn-Mayer	\$ 6,233.33	\$16,394.24
Paramount Productions, Inc.....	6,600.00	825.00
Twentieth Century Pictures, Inc.		8,937.50
	<hr/>	<hr/>
Total.....	12,833.33	26,156.74

Industries, Ltd., filed its Federal corporation income and excess profits tax returns for 1934 and 1935 showing net income of \$46,255.60 and \$143,618.53 for 1934 and 1935, respectively. As to each year the return shows that the income tax due was less than the amount withheld by the studios; the overpayment shown on each return amounted to \$6,473.18 for 1934 and \$6,409.19 for 1935.

Industries, Ltd., filed capital stock tax returns for the fiscal years ended June 30, 1934, 1935, and 1936, and claimed exemption from payment of the

capital stock tax. After the claimed exemption was denied, Industries, Ltd., paid a capital stock tax for each of the years.

The petitioner reported the salary he received from Industries, Ltd., for the taxable years 1934 and 1935, amounting to \$32,811.66 and \$22,419.09, respectively, and paid the income tax due thereon to the Federal Government, and paid an income tax to the State of California for the year 1935.

Industries, Ltd., filed claims for refund for the amount of tax withheld by the studios over and above the amounts shown as due on its income tax returns for 1934 and 1935. Additional claims for refund were filed by Industries, Ltd., for the refund of all the corporation's income tax withheld from it and paid to the collector by the studios in order to protect the corporation's interest in the event that this proceeding should result in the taxation of income to petitioner. Claims for refund were also filed for the capital stock tax paid for the fiscal years. Subsequent to the taxable years and in 1937 the Bureau of Internal Revenue denied the claims for refund as to capital stock tax.

During the first year of its existence, May 1, 1934, to April 30, 1935, Industries, Ltd., loaned petitioner \$22,520 and during the second year it made additional loans to the petitioner amounting to \$78,625. The loans in the first year were made because of the extra expense to the petitioner of maintaining living quarters in Hollywood and London simul-

taneously. The loans made in the second year were nearly all spent in the purchase of a leasehold in London and a valuable painting. These loans were amply secured [20] by the assignment of life insurance policies amounting to \$100,000 and by the leasehold.

Industries, Ltd., was organized for a business purpose. During the taxable years the company began gathering material and preparing for future production. In December 1935 it acquired an option on a play called "The First Gentleman." It did not begin production of pictures in the taxable years, on account of lack of funds. Subsequent to the taxable years and after the company had accumulated sufficient capital it actively engaged in production either on its own account or through a subsidiary company.

OPINION

Arnold: This proceeding involves the question of whether petitioner or Industries, Ltd., shall be taxed upon sums paid to the corporation by various moving picture producers. The respondent contends that we should look through the corporate form under which petitioner's business was alleged to be conducted to the actual and substantial facts and determine that Industries, Ltd., was organized as a tax avoidance scheme. The respondent asserts that Industries, Ltd., was merely the agent and alter ego of the petitioner, that it served as a conduit or passageway for his Hollywood earnings to

his London bank account, and that the agreements between Industries, Ltd., and the Hollywood film producers were anticipatory arrangements for the deflection of income. The answer to respondent's contentions turns upon whether the corporation should be recognized or disregarded as an entity separate and apart from the petitioner.

In *New Colonial Ice Co. v. Helvering*, 292 U. S. 435, 442, the Supreme Court stated:

As a general rule a corporation and its stockholders are deemed separate entities [citing cases] and this is true in respect of tax problems [citing cases]. Of course, the rule is subject to the qualification that the separate identity may be disregarded in exceptional situations where it otherwise would present an obstacle to the due protection or enforcement of public or private rights [citing cases].

See also *Groves v. Commissioner*, 99 Fed. (2d) 179; *Commissioner v. Griffiths*, 103 Fed. (2d) 110; *Belle G. Loewenberg*, 39 B. T. A.—(May 16, 1939). In our opinion, however, the facts herein fail to bring this proceeding within any recognized exception to the above stated general rule.

We have found as a fact that Industries, Ltd., was a business organization, managed by business men, and created for business reasons. Its failure to engage extensively in the production of motion pictures [21] during the taxable years was reason-

ably explained as due to a lack of capital. Subsequent events support this explanation. The contract of May 4, 1934, indicates that the directors of Industries, Ltd., and the petitioner contemplated that Industries, Ltd., would be engaging in motion picture or theatrical activities. The testimony of one of its directors and the minutes of the directors' meetings of Industries, Ltd., establish that as soon as sufficient capital was accumulated the company actively engaged in production.

The loan agreements whereby petitioner was to act for Hollywood producers were in accordance with the general practice in the industry, where one studio or producer had a long term contract for the services of an actor. Industries, Ltd., had such a contract for petitioner's services, and the amount which it could realize therefrom depended upon his continued popularity with the public and the use of his services by the producing companies. While Industries, Ltd., had the right to petitioner's exclusive services, it was obligated to pay him a salary of more than \$3,000 per month for five years. By virtue of its loan agreements with studios and its rights under the assignment by petitioner of his percentage of the gross receipts from "The Private Life of Henry VIII," the directors were able to provide the company with sufficient capital to embark upon production in their own right. This, in our opinion, was the ultimate aim and purpose for which the company was organized.

We agree with petitioner that this proceeding is in many respects comparable to the situation in *Fontaine Fox*, 37 B. T. A. 271. Laughton's only relationship with the contracts for the loaning of his services was to consent to the performance of the services provided for in such loan contracts. The amounts sought to be taxed as petitioner's earnings were received by Industries, Ltd., under contracts between it and the studios. There was no assignment of future earnings or future income such as existed in *Lucas v. Earl*, 281 U. S. 111, and there is here no occasion to apply the doctrine of that case.

The fact that petitioner is a nonresident alien and that Industries, Ltd., is a foreign corporation is immaterial so far as the present question of law is concerned. Given the same circumstances with respect to a citizen of the United States and a domestic corporation, the principle of law would apply with equal force. The principal difference between the two classifications is that nonresident aliens and foreign corporations are subject to the withholding provisions of sections 143 and 144 of the Revenue Act of 1934 with respect to income from sources within the United States, which generally speaking have no application to citizens of this country or domestic corporations.

Considering the entire situation, we are of the opinion that Industries, Ltd., is an entity separate and apart from the petitioner, and [22] that its

income should not be taxable to him. This determination removes the necessity of considering any of the alternative issues presented by the pleadings, particularly, in view of the statements in the briefs of both parties to the effect that the sole question presented was whether the income of Industries, Ltd., was taxable to the petitioner. Since other adjustments were made by the respondent, the deficiencies should be recomputed in accordance herewith.

Decision will be entered under Rule 50. [23]

United States Board of Tax Appeals
Washington

Docket No. 88104

CHARLES LAUGHTON,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the Findings of Fact and Opinion of the Board promulgated June 15, 1939, the respondent herein having on August 3, 1939, filed a recomputation and the petitioner having on September 6,

1939, filed an acquiescence therein, now therefore, it is

Ordered and decided: That there are deficiencies in income tax for the years 1934 and 1935 in the respective amounts of \$289.66 and \$264.22.

[Seal] (s) WILLIAM W. ARNOLD,
Member.

Entered Sep. 11, 1939. [24]

[Title of Board and Cause.]

STIPULATION OF VENUE

Pursuant to the provisions of Section 1002 of the Revenue Act of 1926, as amended by Section 519 of the Revenue Act of 1934, it is hereby agreed and stipulated that the decision of the United States Board of Tax Appeals in this proceeding may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit.

(sd) SAMUEL O. CLARK, JR.
Assistant Attorney General,
Attorney for Petitioner.

(sd) JOHN B. MILLIKEN

(sd) HARRIET GEARY

(sd) HERSCHEL B. GREEN
Attorney for Respondent.

[Endorsed]: U. S. B. T. A. Filed Nov. 17, 1939.

[25]

[Title of Board and Cause.]

PETITION FOR REVIEW AND ASSIGN-
MENTS OF ERROR

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes the Commissioner of Internal Revenue, by his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John M. Morawski, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

Jurisdiction

The petitioner on review is the duly appointed, qualified and acting Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, holding his office by virtue of the laws of the United States.

The respondent on review, Charles Laughton (hereinafter referred to as the taxpayer), is a non-resident alien with address care of [26] Myron Selznick & Company, Inc. at 9460 Wilshire Boulevard, Beverly Hills, California. The taxpayer filed his income tax return for the year 1934 with the Collector of Internal Revenue for the Third District of New York and within the judicial circuit of the United States Circuit Court of Appeals for the Second Circuit, and his income tax return for the year 1935 was filed with the Collector of Internal Revenue at Los Angeles, California, and within

the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit. Pursuant to the provisions of Section 1002 of the Revenue Act of 1926, as amended by Section 519 of the Revenue Act of 1934, the Commissioner and the taxpayer have executed and filed in this cause, a stipulation that the decision of the Board of Tax Appeals in this proceeding may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit.

II.

Prior Proceedings

On November 28, 1936 the Commissioner determined deficiencies in income tax against the taxpayer for the years 1934 and 1935 in the respective amounts of \$23,160.03 and \$81,270.84, and sent by registered mail a notice of said deficiencies in accordance with Section 272 of the Revenue Act of 1934. Thereafter and on February 12, 1937, the taxpayer filed a petition for a redetermination of said deficiencies by the United States Board of Tax Appeals. [27]

The case was tried before the Board of Tax Appeals at Los Angeles, California, on June 27, 1938.

On June 15, 1939, the Board promulgated its findings of fact and opinion (40 B.T.A. 101), and on September 11, 1939, entered its decision that there are deficiencies in income tax for the years 1934 and 1935 in the respective amounts of \$289.66 and \$264.22.

III.

Nature of Controversy

The question presented was whether the compensation in question was taxable to the taxpayer for whose services it was paid, or to a corporation of which he was the sole stockholder—Motion Picture and Theatrical Industries, Ltd., to which the payments were made. In 1934 and 1935 the taxpayer performed personal services at Los Angeles, California, as a motion picture actor in certain pictures produced by Metro-Goldwyn-Mayer Corporation, Paramount Productions, Inc., and Twentieth Century Pictures, Inc. The compensation for such personal services was transmitted to Motion Picture and Theatrical Industries, Ltd., an English corporation, pursuant to taxpayer's alleged sale of his services to such corporation.

At the time of the creation of the British corporation, Motion Picture and Theatrical Industries, Ltd., the taxpayer was faced with prospects of large income from his talent as a moving picture actor. He came to the United States in 1932 and was engaged in four pictures for Paramount-Publix Corporation, predecessor of Paramount Productions, Inc., and also in one [28] picture for the Universal Pictures Corporation. On March 29, 1933, the taxpayer entered into a contract with Paramount Productions, Inc., under the terms of which one picture, "White Woman" was produced. Said contract also provided for an option on taxpayer's exclusive services in one picture to be produced be-

tween April 15, 1934 and September 15, 1934. This option was exercised by Paramount Productions, Inc., September 15, 1933. After completing the picture, "White Woman", the taxpayer returned to England and on April 30, 1934, Motion Picture and Theatrical Industries, Ltd. was organized.

The compensation in question for the taxable years 1934 and 1935 that was paid over to Motion Picture and Theatrical Industries, Ltd., represented the earnings of the taxpayer for his personal services as a motion picture actor in the production of motion pictures. The British corporation never produced a picture or a play during the taxable years, and during the first year of its existence, May 1, 1934 to April 30, 1935, it loaned taxpayer \$22,520, and in the second year it made additional loans to him amounting to \$78,625.00, the latter amount being nearly all spent in the purchase of a leasehold in London and a valuable painting.

The Commissioner determined that the compensation in question was taxable to the taxpayer. The Board however held that it was not taxable to him.

[29]

IV.

ASSIGNMENTS OF ERROR

The Commissioner avers that in the record and proceeding before the Board of Tax Appeals and in the opinion and final decision rendered and entered by the Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the

Commissioner who now assigns the following errors and each of them, which he avers occurred in said record, proceeding, opinion and final decision so rendered and entered by the Board of Tax Appeals:

The United States Board of Tax Appeals erred—

1. In holding that there are deficiencies in income tax for the years 1934 and 1935 in the respective amounts of only \$289.66 and \$264.22.

2. In failing to hold that there are deficiencies in income tax for the years 1934 and 1935 in the respective amounts of \$23,160.03 and \$81,270.24.

3. In holding that Motion Picture and Theatrical Industries, Ltd., is an entity separate and apart from the taxpayer.

4. In holding that the corporate entity of Motion Picture and Theatrical Industries, Ltd., must be recognized.

5. In holding that the amounts paid by Metro-Goldwyn-Mayer Corporation, Paramount Productions, Inc., and Twentieth Century Pictures, Inc., for taxpayer's services were income of Motion Picture and Theatrical Industries, Ltd., and not taxable to taxpayer. [30]

6. In failing to hold that on the facts an exceptional situation is here presented where the recognition of the corporate entity of Motion Picture and Theatrical Industries, Ltd., presents an obstacle to the due protection and enforcement of public rights.

7. In failing to hold that the amounts paid by Metro-Goldwyn-Mayer Corporation, Paramount

Productions, Inc., and Twentieth Century Pictures, Inc., for taxpayer's services are taxable to him.

8. In failing to hold that the arrangement between the taxpayer, Motion Picture and Theatrical Industries, Ltd., and Metro-Goldwyn-Mayer Corporation, Paramount Productions, Inc., and Twentieth Century Pictures, Inc., was an anticipatory arrangement designed to prevent the amounts paid for taxpayer's services from vesting immediately in taxpayer.

9. In failing to hold that the purpose of Congress to tax payments for services to the party performing such services can not be frustrated by such anticipatory arrangement whether it be designated a transfer of future income or future services.

10. In failing to hold that the personal earnings of the taxpayer are taxable in their entirety to him.

11. In failing to hold that the amounts paid by Metro-Goldwyn-Mayer Corporation, Paramount Productions, Inc., and Twentieth Century Pictures, Inc., for taxpayer's services represented compensation for personal service taxable to him. [31]

12. In failing to hold that the amounts paid by Metro-Goldwyn-Mayer Corporation, Paramount Productions, Inc., and Twentieth Century Pictures, Inc., for taxpayer's services are taxable to the taxpayer under Section 45 of the Revenue Act of 1934.

13. In holding that Motion Picture and Theat-

rical Industries, Ltd., was formed for a business purpose.

14. In failing to hold that Motion Picture and Theatrical Industries, Ltd., was not formed for a business purpose.

15. In failing to hold that Motion Picture and Theatrical Industries, Ltd., did not serve a business purpose in connection with the income received during the taxable years in question.

16. In that its decision was not supported by the evidence and is contrary to law.

Wherefore, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed by said Court.

(sd) SAMUEL O. CLARK, JR.

Assistant Attorney General

(Signed) J. P. WENCHEL

RLW

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

JOHN M. MORAWSKI,

Special Attorney,

Bureau of Internal Revenue. [32]

United States of America
District of Columbia—ss.

John M. Morawski, being duly sworn, says that he is a Special Attorney in the Bureau of Internal Revenue and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(sd) JOHN M. MORAWSKI
Special Attorney, Bureau of
Internal Revenue.

Sworn and subscribed to before me this 22nd day
of November, 1939.

(sd) GEORGE W. KREIS
Notary Public.

My commission expires Nov. 15, 1942.

[Endorsed]: U. S. B. T. A. Filed Nov. 28, 1939.

[33]

[Title of Board and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To: John B. Milliken, Esq.,
Herschel B. Green, Esq.,
Harriet Geary,
808 Bank of America Building,
Los Angeles, California.

You are hereby notified that the Commissioner of Internal Revenue did on the 28th day of November, 1939, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 28th day of November, 1939.

(Signed) J. P. WENCHEL,
Chief Counsel, Bureau of
Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 1st day of December, 1939.

(sd) JOHN B. MILLIKEN
(sd) HARRIET GEARY
(sd) HERSCHEL B. GREEN
Counsel for Respondent on
Review.

[Endorsed]: U. S. B. T. A. Filed Dec. 7, 1939.

[Title of Board and Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To: Charles Laughton,
c/o Myron Selznick & Company, Inc.,
9460 Wilshire Boulevard,
Beverly Hills, California.

You are hereby notified that the Commissioner of Internal Revenue did on the 28th day of November, 1939, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 28th day of November, 1939.

(Signed) J. P. WENCHEL,
Chief Counsel, Bureau of
Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 4 day of December, 1939.

(sd) CHARLES LAUGHTON,
Respondent on Review.

[Endorsed]: U. S. B. T. A. Filed Dec. 7, 1939.

[35]

[Title of Board and Cause.]

STATEMENT OF EVIDENCE

The above-entitled cause came on for hearing at Los Angeles, California, June 27, 1938 before the Honorable W. W. Arnold, member of the United States Board of Tax Appeals, there being present the petitioner by his counsel, John B. Milliken, Esq., Herschel B. Green, Esq., and Harriet Geary, and the Commissioner by his counsel, Alva C. Baird. Thereupon, the following proceedings were had:

A stipulation of facts, together with exhibits, was received in evidence and is hereby included and will be designated as a part of this statement of evidence.

Whereupon, the following occurred:

Mr. Milliken: In the petition filed in this case, there was of course attached to the petition a copy of the 90-day letter issued by respondent. I desire to first refer to page 2 of such 90-day letter with respect to year 1934 wherein is set forth "Gross salary actually earned, from Metro-Goldwyn-Mayer Studios, \$45,333.33", and from Paramount Studios, \$48,000.00.

And then, on page 4 of the 90-day letter, it sets forth for the year 1935:

"Gross salary actually earned:

Metro-Goldwyn-Mayer Studios.....	\$118,428.59
Paramount Studios	9,000.00
Twentieth Century Pictures, Inc.....	65,000.00"

Those sums have been changed somewhat in the stipulation referred to, in inconsequential amounts. I should like, if counsel for the respondent would agree to the stipulation that the sums of money which I have just read into the record from the 90-day letter were and are the identical sums of money which respondent in his 90-day letter seeks to add to and include in the income of this petitioner, Charles Laughton.

Mr. Baird: Just a minute. That is true, with one possible exception (examining document). Mr. Milliken, that is true, and we will so stipulate, with this exception, that the \$20,000.00 item on page 4, "net salary reported"—in other words, the additional amount is \$171,482.82, and not \$192,428.59.

Mr. Milliken: Well, the point is, I am endeavoring to save time, and I am sure we do agree that the sums here which were paid to the corporation and on which the corporation tax had been withheld are the same sums which the Commissioner, by ignoring the corporation, now includes in the income of the petitioner, Charles Laughton, over which we are here, now, in controversy.

Mr. Baird: That is right; in other words, you want me to stipulate that the amounts paid to the corporation are the amounts involved in this controversy.

Mr. Milliken: Yes.

The Member: Very well, it is so understood.

Thereupon, the following documents were received in evidence: Federal income tax returns of Charles Laughton for the calendar years 1934 and 1935 and marked taxpayer's Exhibits 1 and 2 respectively; individual income tax return for the calendar year 1935, filed with the State of California by Charles Laughton, and marked taxpayer's Exhibit 3; income and excess-profits tax return of Motion Picture & Theatrical Industries, Ltd. for the calendar year 1934 and marked taxpayer's exhibit 4; capital stock tax return of Motion Picture & Theatrical Industries, Ltd., for the year ending June 30, 1934, and marked taxpayer's Exhibit 5; income and excess-profits tax return of Motion Picture & Theatrical Industries, Ltd., for the calendar year 1935 and marked taxpayer's Exhibit 6; capital stock tax returns of Motion Picture & Theatrical Industries, Ltd., for the years ending June 30, 1935 and June 30, 1934, and marked taxpayer's Exhibits 7 and 8, respectively; claim for refund dated November 9, 1936 by Motion Picture & Theatrical Industries, Ltd., with respect to tax withheld at source from that corporation, and marked taxpayer's Exhibit 9; claim for refund dated November 9, 1936, with [37] respect to tax withheld at source, for and on behalf of Motion Picture & Theatrical Industries, Ltd., and marked taxpayer's Exhibit 10;

claims for refund of Motion Picture & Theatrical Industries, Ltd., in the sums of \$6,409.19 and \$26,156.74, both for the calendar year 1935, and marked taxpayer's Exhibits 11 and 12, respectively; claims for refund of capital stock tax, filed by Motion Picture & Theatrical Industries, Ltd., in the sums of \$1,294.58, \$1,220.37, and \$750.00 for the years ending June 30, 1934, June 30, 1935 and June 30, 1936, respectively, and marked taxpayer's Exhibits 13, 14, and 15, respectively; a letter from D. S. Bliss, Deputy Commissioner, to Motion Picture & Theatrical Industries, Ltd., rejecting the claims for refund of capital stock tax for the years ended June 30, 1934, 1935 and 1936, and marked taxpayer's Exhibit 16; a letter from D. S. Bliss to Motion Picture & Theatrical Industries, Ltd., dated April 1, 1938, allowing the claim for exemption of the corporation from the capital stock tax for the year ended June 30, 1937, and marked taxpayer's Exhibit 17.

Said taxpayer's Exhibits 1 to 17, inclusive, are hereby included and will be designated as a part of this statement of evidence.

MR. ALFRED TREGEAR CHENHALLS,
being first duly sworn, testified on behalf of the taxpayer as follows:

I reside at 10 Hyde Park Mansions, London, England. I am a chartered accountant. I was trained

(Testimony of Mr. Alfred Tregear Chenhalls.)
as chartered accountant for six years, and I [38]
have been in practice as a chartered accountant
in London for sixteen years. After that, I was public
auditor appointed by the English Government,
and Fellow of the Royal Statistical Society. I have
been associated in a professional way with Mr.
Charles Laughton for over five years past. As to
the nature of my professional association with Mr.
Laughton, I have been his complete financial adviser,
both personally and in relation to this company.
In my work as chartered accountant in England,
for the years I have testified to, I have specialized
in work appertaining to, I suppose, all branches
of theatrical and film work. Mr. Laughton
continually discussed the matter of the organization
of Motion Picture & Theatrical Industries, Ltd.,
with me for at least a year or perhaps eighteen
months before it was incorporated in April, 1934.

Q. Will you please state to the Board the
nature of the discussion which you had with
Mr. Laughton concerning the organization of
this corporation?

A. I will. Mr. Laughton has a theory that
actors always die poor, and producers die rich.
He was not content to retain this status of a
film star. His successes are very recent. It was
only in 1932 that he made the first film from
which he derived money. He saw, on all sides,

(Testimony of Mr. Alfred Tregear Chenhalls.)

actors making a great deal of money but dying poor.

Thereupon counsel for Commissioner objected to the witness answering that question and all other questions of similar import, on the ground that he relies on conclusions as to what was in the mind of the taxpayer, that the question calls for an answer which is hearsay, and it would be in the nature of a self-serving declaration, that he is precluded from making any cross examination of the taxpayer, and that this same objection goes to all of the questions of this same nature. [39]

The Board Member ruled that the testimony will be received subject to the objection, and that the objection goes to the entire course of testimony along this line. The Member noted an exception for the Commissioner.

Mr. Milliken: However, both reserving exceptions depending upon the ruling your Honor will make?

The Member: Yes.

By Mr. Chenhalls:

I am a director in and accountant to Motion Picture & Theatrical Industries, Ltd. A director is, ipso facto, an officer of the corporation. As to Mr. Laughton's statements to me with respect to the occasion and need for this corporation:— Mr. Laughton used to talk to me about it continually

(Testimony of Mr. Alfred Tregear Chenhalls.)

and say clearly that it was his purpose—no, not for me to tell you the inferences—but he told me it was his theory that, as an actor, he would die poor. He had a Gerald du Maurier in mind who died poor, and he said that he was determined, while he was on the crest of the wave, to safe-guard his resources, that he would engage the services of the finest writers in New York, and technicians, and cameramen and form a renaissance of the British film industry. It was a matter of common knowledge that the industry in England was at a low ebb; a few years later it crashed. All this, he told me, countless times. He figured that if anything went wrong with him, if he had any adverse experiences in an action at law, or in case of fire, or anything like that, everything could be taken. It is the normal course in England to form a corporation. He did it for that purpose. He had no idea of evading American taxes or English taxes. These discussions took place [40] before, continually, for over two years before the organization of the corporation. I am the accountant of Motion Picture & Theatrical Industries, Ltd., as well as of Mr. Laughton personally. The books of account and records of that company have to be, by our English law, kept under my control. As to whether Motion Picture & Theatrical Industries, Ltd. paid agent's commissions with respect to the sums which I heard you identify heretofore as received by the

(Testimony of Mr. Alfred Tregear Chenhalls.)
corporation, which the Commissioner of Internal Revenue now proposes to tax to Mr. Laughton individually:— They did pay ten percent commissions. Frank Joyce and Myron Selznick were the theatrical agents of Motion Picture & Theatrical Industries, Ltd. By totalling the agency book, I find that, in 1934, the Motion Picture and Theatrical Industries, Ltd. paid Myron Selznick and Frank Joyce as agent's commissions \$8,433.32, and in 1935, payment is shown of \$19,921.23, a total of \$28,354.55.

Whereupon, the parties stipulated that those agent's commissions which were paid, as testified to by Mr. Chenhalls, relate to the identical sums which were earned from the three studios in the two years; that is set forth in the stipulation.

Thereupon, the witness resumed his testimony as follows: Motion Picture & Theatrical Industries, Ltd., had an attorney, Mr. Loyd Wright, in America from late in May, 1934, for the balance of the year 1934 and for 1935. Mr. Loyd Wright was employed by the corporation simply for carrying through contracts between the corporation and the film studios.

Q. And were they the contracts with Metro-Goldwyn-Mayer, Paramount Productions, Inc., and Twentieth Century Pictures, which you have heard me refer to as the sums received by the corporation through these years?

A. Yes, Mr. Loyd Wright carried out all those. [41]

(Testimony of Mr. Alfred Tregear Chenhalls.)

As to what fees the corporation paid to Mr. Loyd Wright for that service in 1934 and 1935:— I can tell you that exactly (examining books). They paid him altogether, including a very large sum of disbursements, \$8,000.00. That was paid in 1935. His first account for work from May or June of 1934 to the end of 1934 was rendered and paid on January 2, 1935, for \$5,000.00. His second account was rendered and paid on December 10, 1935, for \$3,000.00, making the total sums paid to Loyd Wright for both years \$8,000.00.

I am familiar with the contract which Charles Laughton executed under date of May 4, 1934, with Motion Picture & Theatrical Industries, Ltd., whereby he gave his exclusive services to that corporation. (Counsel for taxpayer then stated that said contract has been introduced as an exhibit in this case and in that contract it sets forth that they are to pay him for a period of five years hence the sum of one hundred and fifty pounds per week.) The corporation has paid, beginning with 1934, down to date, that sum weekly to Mr. Laughton, pursuant to that contract.

I am supposed to be an expert on the tax laws of Great Britain.

Q. Has Great Britain attempted to ignore this corporation and to tax the entire proceeds of Charles Laughton?

(Testimony of Mr. Alfred Tregear Chenhalls.)

Mr. Baird: We object to that as being wholly irrelevant and immaterial.

The Member: Objection sustained.

Mr. Milliken: I note an exception.

The Member: Exception noted. [42]

By Mr. Milliken:

Q. Have you here an official document relating to the way in which the British tax authorities consider the Motion Picture & Theatrical Industries, Ltd.?

A. I have, yes.

Q. Does that official document show that the authorities have recanted from any such position as is now being taken by the United States of America? A. It——

Mr. Baird: (Interposing) I move that the answer be stricken; we object to it as irrelevant and immaterial.

The Member: The motion is granted, and the objection is sustained.

Mr. Milliken: May I make an offer of proof.

The Member: Yes.

Mr. Milliken: Counsel, if permitted to, would be able to show that, under date of May 7, 1938, the English Government had heard something of the demands of the Government of the United States, and asked Mr. Chenhalls to prepare and forward to the Clerk of the Special Commissioner of Income Tax of Eng-

(Testimony of Mr. Alfred Tregear Chenhalls.)

land a statement covering and including the operations of this corporation. The record would further show, if counsel were permitted to file it, that under date of May 11, 1938, the Office of The Special Commissioner of Income Tax of England, after the consideration of its pages, on May 7, 1938, with immediate alacrity—only four days—decided that there was no substance to such position.

The Member: May I ask what is the purpose of that offer?

Mr. Milliken: In the first place, your Honor has a very solemn duty in disregarding a corporation of England, which we will show has had a bonafide existence over all this period, and in setting it aside, when England which is the only government having the self-same laws we have here, having the same problem presented to it as your Honor has here, has determined the matter.

The Member: Is it your position that the action of the Government of England is binding?

Mr. Milliken: No, it is not. I think it is merely an aid in construction. [43]

The Member: That is the purpose for which you are offering it?

Mr. Milliken: I do not offer it as binding on the United States Government.

(Testimony of Mr. Alfred Tregear Chenhalls.)

The Member: I fail to see its materiality.

Mr. Milliken: I note an exception.

The Member: Exception noted.

By Mr. Milliken:

Q. Mr. Chenhalls, has, to your knowledge, Mr. Laughton, since May 4, 1934, engaged in any work whether it related to motion picture work, acting on the stage, over the radio, or any other professional performance, that he has not acted through or pursuant to his contract with Motion Picture & Theatrical Industries, Ltd. whereby they have exclusive right to his services?

Mr. Baird: We object to that because that is practically the issue in this case. It is true that there was a corporation organized; there is no dispute about that. The articles of incorporation, or what correspond thereto, are in evidence. The contract the petitioner made with the British company is in evidence, but the issue is whether or not the Board is going to disregard the form and look to the substance. Furthermore, it calls for a conclusion by this witness.

The Member: Read the question, please, Mr. Reporter.

(Whereupon, the reporter read the pending question, as recorded.)

(Testimony of Mr. Alfred Tregear Chenhalls.)

The Member: The witness may answer.

Mr. Baird: I note an exception.

The Member: Exception noted.

By Mr. Milliken:

Q. Answer the question, please.

A. He has done such performances, but not outside of the scope of his contract. The directors would not allow him to do so. [44]

Q. Mr. Chenhalls, has Mr. Laughton—and I am asking you as an officer or director of the corporation and an accountant—done any work for charity, with respect to principals or otherwise?

A. Mr. Laughton has. He acted on the stage last Christmas, and gave the whole of the proceeds to charity, but owing to the service agreement of May 4, 1934, the corporation had to receive the proceeds, to pay the tax on them, but in spite of that handed it over to charity.

I have a minute book of Motion Picture & Theatrical Industries, Ltd., with me. I have had prepared and notarized before the American Consul verbatim copies of all the minutes of the meetings of Motion Picture & Theatrical Industries, Ltd.

Examination By Mr. Baird:

As to whether I was present at any of the meetings referred to in this minute book:— not in the meetings, for the first two years of the existence

(Testimony of Mr. Alfred Tregear Chenhalls.)
of the corporation, that is, for 1934 and 1935 and part of 1936. I did not make any of the entries in this book relating to the years 1934 and 1935. I was in America during a portion of 1934 and during a portion of 1935, at which time some of the meetings referred to in this minute book were held. Those meetings were held in London. This book was not kept by me personally. It has been kept personally by me since I was appointed a director, in the early summer of 1936, I think. Prior to that I was not a director or officer of the company. As to whether I had been an auditor or accountant for the company prior to the early part of 1936:— No; auditors had been appointed, but they did not act practically until January, 1938. The accountant of the company then was Mr. Shipley, and I believe the writing [45] in that book is that of Mr. Shipley or of his staff. I do not know what individual did the writing of the book, whether it was Mr. Shipley or someone else.

Examination By The Member:

That is the original minute book of the corporation. I cannot say the minutes were made by an officer of the corporation who was duly authorized to make such entries. I know that is the original minute book of the corporation because I have kept it for the past two years. My testimony goes to the extent that that whole book is the original minute book of the corporation. I know that is true because

(Testimony of Mr. Alfred Tregear Chenhalls.)
these minutes have been signed by Mr. Guedalla who has been chairman of the corporation throughout. I can infer by the signature of Mr. Guedalla that that minute book was kept by a person, an officer of the corporation authorized to keep the minutes.

Examination by Taxpayer's Counsel:

I am familiar with Mr. Guedalla's handwriting. I find that he has counter-signed the minutes. I am able to identify that as his signature.

Q. That was the minute book that was turned over to you by the corporation to check that with the minutes in which you were a participant? A. Yes.

(A copy of said minutes was received in evidence as taxpayer's Exhibit 18, and is hereby included and will be designated as a part of this statement of evidence.)

I have a stock register book of the corporation. I recognize the handwriting as when I became official director of this corporation. As to [46] whether that book was handed to me as an officer director of the corporation, as its official stock register book:— it was, and I had to verify every entry before I could continue with it, and I did verify every entry in it. Mr. Laughton, in monies, paid six thousand pounds in cash for share holdings in this corporation.

(Testimony of Mr. Alfred Tregear Chenhalls.)

Q. Did Mr. Laughton also, to your knowledge, turn over the percentage which he had coming to him with respect to a picture which he had made in England known as *The Private Life of Henry VIII*?

A. He did; that is also mentioned in the agreement you have agreed to.

Q. Dated May 4, 1934?

A. Yes, it is part of the consideration.

Q. Did the corporation receive any sums of money from additional income Laughton had in the percentage in *The Private Life of Henry VIII*?

A. It did then, and has been ever since.

Q. Were those a considerable sum or a nominal sum of money?

A. A considerable sum.

I have the cash books, as regards the American accountancy and as regards the English accountancy. I have verified every item from the beginning of the company partly because it was Mr. Laughton's instruction, and partly because the auditing had not been done by Price Waterhouse & Co. and I had to get the records retrospectively for their audit of the three years which did not take place until January, 1938. I have checked and verified each item appearing under those accounts. I have testified that the corporation paid Mr. Charles

(Testimony of Mr. Alfred Tregear Chenhalls.)

Laughton 150 pounds a week, and has done so continuously. [47]

Q. Will you tell his Honor what other business in the way of expenditures this corporation has engaged in from 1934 down to the present time.

Mr. Baird: We object to the question as taking in too much territory: we are not concerned with it down to the present time—this is 1938.

The Member overruled the objection and noted an exception for the Commissioner.

It bought books in July, 1934. The first amount spent on books was four pounds thirteen, \$23.50. I do not know what book that was. It paid a well known English writer, Norman Ginsbury, \$750.00 for the option, on a play called "The First Gentlemen". That is in December, 1935. In February, 1936, it paid for play reading \$35.00. Mr. Laughton and I used to pay play readers and people out of our own pockets, from time to time, that is, I mean that this item of \$35.00 is ridiculous, as we frequently used to pay more than that every week. In May, 1936, we renewed an option on "The First Gentleman" by a payment of \$500.00.

There are items here for play reading, and disbursements of that sort throughout. They are covered in the petty cash items; we drew out at the time petty cash in amounts of from fifty to five

(Testimony of Mr. Alfred Tregear Chenhalls.)

hundred dollars at a time. As to whether they are identified in petty cash account:— I have not brought the petty cash book.

In November, 1936, \$26.00 deposit was paid for a script. In December, 1936, a play reader was engaged at a salary of \$37.50 a week, which was doubled to \$75.00 a week, a few weeks later. In December, 1936, we paid Arthur Bryant, a well known English historian, \$500.00 on account of \$3,000.00 [48] for research work for a film. In December, 1936, an additional secretary was engaged for the company's work in connection with theatrical matters; that is to say, we had a definite play reader and a definite secretary. We have various items of telephone calls in connection with films, such as one which cost \$136.00 to Miss Norma Shearer, dated January 26, 1937. In March, 1937, we paid a well known English writer, Somerset Maugham \$7,500.00 on account of \$15,000.00, for the film rights of his story, *The Vessel of Wrath*. In that month we paid an American scenario writer \$750.00 traveling expenses to come to England and consult about films. In March, 1937, we paid \$150,000.00 to the Mayflower Picture Corporation for the production of films, as an initial stake toward the production of films, two of which have been produced at a total cost of \$1,000,000.00. In March or April, 1937, we commenced paying a well known English author, Miss Clemence Dane \$750.00 a week for treatment of film material. That is to say, in

(Testimony of Mr. Alfred Tregear Chenhalls.)

a year we paid her \$39,000.00 and are continuing to do so. In April, 1937, we paid another author V. S. Pritchett \$1,000.00 for a short story. In April, 1938, we paid The Hospital for Sick Children \$1,-215.00 being the proceeds received by the corporation for the use of Mr. Laughton's services in the stage production of Peter Pan. In that month we paid to the account of Miss Elsa Lanchester, wife of the plaintiff, \$1,060.00 salary for the loan of her services toward a star part in Peter Pan, in fact, the part of Peter Pan. That is not everything, but those are typical amounts in the first three years of the company. [49]

By Mr. Milliken:

Q. Mr. Chenhalls, since you have been an officer and director in that company, do the minutes record, and does the cash book reflect, other projects which have been considered by the corporation which would have required or entailed a considerable expenditure of money?

A. Yes. The minute book does not contain one tenth of the total transactions of the company. It records those transactions which have definitely been concluded, or where there is a strong reason to get something down in writing.

He (Mr. Laughton) has not taken an active part in the production of Motion Pictures & Theatrical

(Testimony of Mr. Alfred Tregear Chenhalls.) Industries, Ltd.; he is not a director. It is true that he owns all except the qualifying shares of the corporation. As to whether he permits the present directors and officers to run the corporation:—It is not a question of his permitting them. He financed the corporation so that business people should run his affairs. They are not only allowed a free hand but they never ask his permission. They are business men, just as he is an actor. That is a common practice in England. As to whether the plan of procedure of the motion picture industry in England in the way of financing pictures is different from, for instance, what we have in America here: Yes, it is a great deal different. In England somebody starts a small unit, such as Mr. Laughton founded with \$30,000.00. That money is then spent for retaining options, on plays, writers, technicians, and so forth. When the people who run this corporation, that is to say, the directors of this company, are in a position to say that they have definitely concluded arrangements to secure options, plays and other material and people, they approach the finances. The finances of British films were normally [50] obtained from a bank overdraft which is guaranteed by some rich person and which is guaranteed again by Lloyd's Underwriters; everybody therefore makes an income—the Bank gets five percent, the underwriters get about seven percent and the guarantor gets six percent.

(Testimony of Mr. Alfred Tregear Chenhalls.)

Q. Now, these script writers and other persons you have mentioned, they were employed by the corporation to read script that would be suitable for pictures to be made by Motion Picture & Theatrical Industries, Ltd., is that correct?

A. Yes, those are the people I have just read to you.

As to why the corporation didn't earlier engage in such an expenditure as \$150,000.00 which I mention with respect to some motion picture concern in England:— I know, from constantly associating with Mr. and Mrs. Charles Laughton, both professionally and socially, that the reason this company, the formation of which we talked over so many times, could not go into production earlier was, first, because it had not enough money in the first two years, and second, because it spent so much in the production of a French play which came to nothing. I was an officer in the corporation and had been for a long time when they paid out this \$150,000.00.

Q. And that was the discussion, was it, why they had not earlier embarked upon it, because their cash was not sufficient?

A. It was partly that and partly because Mr. Laughton had met the producer whom he wanted to give up the next few years of his life to.

(Testimony of Mr. Alfred Tregear Chenhalls.)

Cross Examination

This \$150,000.00 was spent for a stake, an initial deposit and investment for the production of films, implying that a further investment would be made at a later date. We expected to get from this \$150,000.00 [51] a world wide distribution of three very large films. We were not paying this \$150,000.00 to the Mayflower Film Company in order to get them to distribute two films in which we had an interest. The \$150,000.00 was invested in buying the services of various playwrights and film stars, such as \$15,000.00 which was paid to an English film manufacturer, John Maxwell, to form an English company, the Mayflower Pictures Corporation, Ltd., which was guaranteed by him to the extent of \$1,250,000.00. If this motion picture company had not spent approximately \$150,000.00 it would have had nothing to pay to John Maxwell to obtain from him such a large investment as that. Not by any means are we using this as an investment company for the resources of Charles Laughton. Laughton is only one in the Mayflower Company.

Q. But you were buying for Charles Laughton, or his solely controlled corporation, an interest in this Mayflower Pictures Corporation, Ltd's enterprises? A. Yes.

On May 19, 1936, I was appointed a director of Motion Picture & Theatrical Industries, Ltd. I had had a great deal of connection with the com-

(Testimony of Mr. Alfred Tregear Chenhalls.)

pany. I was not an officer prior to that date. I had had no specific contract of employment, but when I was appointed director I was paid a large fee which I believe related to services I had done, one way or another, up to that date. The Company paid me for some previous services when I became a director on May 19, 1936. The nature of that service was general office—I was in the extraordinary position of being an auditor but doing general office work. Up to that time I had been Mr. Laughton's personal [52] friend for nine years and his financial adviser for three years. He used to pay me fees for specific services rendered. As to the nature of the advice I had to give Mr. Laughton for which he paid these fees:— It all related to this thing he had in mind of extending his scope as a film actor, or forming a big English film company. In connection with my duties and my employment with him, and in my capacity as a Chartered Accountant, it was not necessary for me to become familiar with the tax laws not only of Great Britain but of all other countries in which Mr. Laughton performed. In connection with the transactions in which he engaged, I did not beforehand, unfortunately, but afterwards familiarize myself with the effects, from a tax standpoint, of the contemplated transaction. I wish I had done it beforehand: if I had, I would have thought of a better way of evading taxes than the allegations here.

(Testimony of Mr. Alfred Tregear Chenhalls.)

I have gained some experience by my association with this case and this controversy. It is not true that in May, 1934, when the British company was organized, Mr. Laughton was then under contract for services not only to motion picture producers in Great Britain, but also in the United States. From 1934, when Mr. Laughton gave his services to Motion Picture & Theatrical Industries, Ltd., he was under contract primarily to London Film Productions, Ltd. As to whether it isn't true also that he was under contract with Paramount whereby they could exercise an option on a then existing contract:— Subject always to London Film Productions, Ltd., with which he had had a contract since 1933, and with which he had to make seven more films, and subject always to the directors of Motion Picture & Theatrical Industries, Ltd., as to whether they [53] would allow him to go to America at all, he was under contract to Paramount. He had had several contracts with Paramount. I am not sure it is a fact that, on the very day of May 4, 1934, when he entered into a contract with the British company, namely, Motion Picture & Theatrical Industries, Ltd., that he was then under contract with Paramount to produce another picture in that year. I am under the impression that that contract had been cancelled. As to whether it was not a fact that some consideration was given, in May or thereabouts, to the effect of the American Income tax

(Testimony of Mr. Alfred Tregear (Chenhalls.)

laws on the income of Mr. Laughton, that he was earning, or that there was a reasonable probability of his earning if he continued to play in this country: No, there just wasn't. None of us can vouch for that. I did not consider that, as far as I know. Later on, in 1936, I did come to this country and make some inquiry or investigation about the tax angle, because you were most improperly seeking to tax us.

I wrote the letter of July 10, 1936, to Mr. Laughton. Counsel for the Commissioner then read the following statement from said letter of July 10, 1936, and asked witness as to the purpose of the proposed financial arrangement that he was making to Mr. Laughton:

"I put up several propositions to Irving Thalberg's attorneys, but the one I aimed at getting through is based on one of your own. It is that Irving Thalberg agrees to take up all three years' options at once, i.e., that you definitely have seven pictures to do with him. That the total remuneration under your M.G.M. agreement should be added up, divided by seven, fixing an annual sum PAYABLE OVER SEVEN YEARS. That this annual sum should [54] then be divided by 52, fixing the amount you are to receive every week as from the signing of a new contract."

Witness testified as follows:

(Testimony of Mr. Alfred Tregear Chenhalls.)

The proposed financial arrangement that I was making with Mr. Laughton was based on these circumstances or agreements that he had with Metro-Goldwyn-Mayer, dated in July and August, 1934, the August one being, I think, an extension of the July one, and made before there had been released to the public two or three very successful films. One of them, *Mutiny On The Bounty*, grossed many millions of dollars; another, *The Barretts of Wimpole Street*, and another one, *Ruggles of Red Gap*, made by Paramount, are very successful, and that increased his return enormously, and the remuneration he was to get was something like \$85,000.00, I think, a film. I was aware, from his agent and others that their market value, per film, had risen to \$200,000.00, at least. I went to Irving Thalberg as the principal party and asked him whether he would increase that \$85,000.00 under contract, to \$200,000.00, that is, whether we could agree on some form of remuneration which would save that American tax, and Laughton made that point, that it would mean that Metro-Goldwyn-Mayer would take over part of Laughton's tax. That letter was reporting to Mr. Laughton various suggestions that had been thrown out, which bore no result at all, and had no effect on what happened to his income or tax in 1935. As to whether in connection with this method of spreading the income over several years, I had no consideration of the effect of such

(Testimony of Mr. Alfred Tregear Chenhalls.)
a spread:— Oh, certainly, I did, because I had understood we were threatened with this claim. In other words, if the whole of our perfectly legal and normal corporation was to be disregarded, nobody could blame us for looking ahead to the future.

[55]

Counsel for Commissioner then read the succeeding paragraph from said letter, as follows:

“My suggestion is that the new contract should be made by the London Subsidiary of M.G.M. with you personally (instead of M.G.M., Culver City, with Motion Pictures Ltd). That is to say you would be on the payroll of M.G. M., London for seven years in respect of making seven pictures during 1937, 1938 and 1939. I put it to Thalberg three of these seven pictures should be made by you and him in England,”

and asked witness whether he made that suggestion that the contract be entered into with Mr. Laughton personally instead of with Laughton's British-owned and controlled corporation which had the sole contract for Laughton's pictures.

Thereupon the following occurred:

A. Is it allowable for me to read that?

Q. Yes, indeed; I am asking you about this paragraph, from here to there (indicating).

A. I am afraid I have no idea. I cannot recollect anything of the occasion I advised that.

(Testimony of Mr. Alfred Tregear Chenhalls.)

Q. Well, Mr. Chenhalls, would it by any chance be that, having a contract with the London organization of M.G.M. and having it entered into with Mr. Laughton personally and having the contract provide that certain pictures be made in England, and certain pictures here, you were giving any consideration to the fact that Mr. Laughton might by that arrangement avoid taxes in America?

A. It was partly that.

Q. That was part of the reason for making that suggestion?

A. Oh, having had the warning of what you were able to do for us in 1934 and 1935, from 1936 on we were going to be much more careful and be forewarned.

Q. Now, directing your attention to the top of page three of this same letter, I will ask you how you arrived at the conclusion therein reading:

“My calculation of the American income tax you owe to date is \$58,000.00. This is based on the assumption (with which Green agrees) that your setup for American tax purposes will go down all along the line.” [56]

Just who is the Green to whom you refer?

A. Associate to Loyd Wright.

Q. The gentleman sitting here at the table (indicating). A. Yes.

(Testimony of Mr. Alfred Tregear Chenhalls.)

Q. What did you mean by the statement: "This is based on the assumption (with which Green agrees) that your setup for American tax purposes will go down all along the line"?

A. That means that you're contention will succeed—I hope I am wrong.

Mr. Milliken: If your Honor please, I move that all testimony be stricken with reference to the letter of July 10, 1936, written by Mr. Chenhalls to Mr. Laughton, first, because it is past the year 1934-1935, and also that it expresses a conclusion which Charles Laughton should not be bound by an accountant, or by an attorney, or by anybody else who might give an opinion, that Mr. Laughton, the petitioner here, is not bound by a hearsay rule of what somebody may have thought about some tax problem. It does not prove any issue of this case. It is immaterial whether Mr. Green or Mr. Chenhalls or I thought something was right or wrong. It is incompetent, irrelevant and immaterial.

The Member: The objection is overruled and the motion denied.

Mr. Milliken: I note an exception.

The Member: The exception is noted.

For the year 1934, no expenditures were made by the corporation in the production of motion pictures. We paid Mr. Laughton's salary for 1934.

(Testimony of Mr. Alfred Tregear Chenhalls.)

As to whether we made any expenditures in connection with his profession as an actor:— Yes, we did things like paying \$110.00 to Variety Magazine for an advertisement. We paid Mr. Laughton a large sum by way of loans because of the extra expenses caused to him in living in London and Hollywood simultaneously. For the year ended April 30, 1935, the total amount loaned to Mr. Laughton was \$22,520.00. Those loans were never paid back, but they are secured.

Q. Well, as a matter of fact, Mr. Laughton owns the company anyway, does he not?

A. In the last extreme, yes.

Q. Well, he is owner of the beneficial stock?

A. Yes. [57]

We made additional loans, ending the second year, ending April 30, 1936, of \$78,625.00; that was doubly secured because nearly all of it was spent in the purchase of a valuable painting and of a leasehold in London which Mr. Laughton regards as much better, more appreciated than what are commonly called gilt-edged securities, and it was collaterally secured by life policies of \$100,000.00. This was made to enable him to purchase a valuable painting and also some real estate too. The painting and the real estate were not hypothecated to secure this loan. There is no process under English law by which a painting can be hypothecated; there is no

(Testimony of Mr. Alfred Tregear Chenhalls.)

such thing as a chattel mortgage. It was secured by his property which he lived in. Mr. Laughton lives in this property on which he borrowed the money to make the purchase. It is a very large home and two floors of it are reserved primarily as offices of the company. And then there was further security by Mr. Laughton assigning two policies of insurance of \$50,000.00 each, at five percent per annum, interest, the company to maintain the premiums. The company is the beneficiary on Mr. Laughton's life. In those two years, no premiums were paid by the company; Mr. Laughton, himself, paid it, about \$6,000.00 premium. It was not until the third year of the company that it occurred to us that the loan account of Mr. Laughton did not seem immediately likely to become payable, because we were saving every penny to invest in the Mayflower Pictures Corporation. As to what other sums were paid to Mr. Laughton by the company in 1934-1935, for his professional services: these charges to Mr. Loyd Wright were all in connection with film contracts. I [58] think I told you that those were \$8,000.00. We paid \$8,000.00 to Mr. Loyd Wright, a practicing attorney in this city, in two different sums, \$5,000.-00 at one time, and \$3,000.00 at another. The first \$5,000.00 payment was made the second of January, 1935, and the other one on December 10th, 1935. That payment was made for services in connection with contracts between the corporation and film

(Testimony of Mr. Alfred Tregear Chenhalls.)

studios, and services in connection with proposed contracts between the corporation and film studios, which did not materialize. I cannot answer you from knowlege as to whether any portion of that \$5,000.00 payment represents fees for services which Mr. Loyd Wright rendered to Mr. Laughton personally, but I can answer you from inferences. I think I am correct in saying that Mr. Loyd Wright never rendered a bill, and that he did not act until February, 1935, and so, in January, 1935, he would not have rendered a bill for personal services. It is not a fact that some time in 1934 Mr. Loyd Wright acted as attorney in some negotiations for Mr. Laughton in connection with motion picture contracts. He was employed by the corporation. The corporation engaged Mr. Loyd Wright to carry into effect various proposed contracts which had been arranged usually with Myron Selznick, they having been paid for creating liaison between Mr. Laughton and the film studios. As to whether he was also an attorney for Mr. Laughton at the time: I did not know him at the time, but I remember some conversation about Laughton giving a power of attorney to a man he did not know. I think the answer is, no. Referring to payment of \$1,060.00 in 1938 to Elsa Lanchester,—Mrs. Charles Laughton—, she was employed to play opposite him in a stage play called Peter Pan. [59]

Q. With reference to the Selznick-Joyce agency, the official name of which is, I believe,

(Testimony of Mr. Alfred Tregear Chenhalls.)

Frank Joyce-Myron Selznick, Ltd., it is true, is it not, that that corporation was an agent, a theatrical agent, of Mr. Laughton during the period 1934-1935, throughout those two years and for some time thereafter?

A. No—in May, 1932, I think, Laughton signed a contract with Frank Joyce-Myron Selznick, for five years. Part of the service agreement of Laughton and Motion Picture & Theatrical Industries, Ltd. provided in a clause that all of the obligations which Laughton had to render in the remaining three years of the contract were taken over by the corporation.

Q. In other words, in May, 1934, when Mr. Charles Laughton entered into a contract for his exclusive services with the British company, he was then under contract with the Frank Joyce-Myron Selznick agency, and that contract was in effect on May 4, 1932?

A. Yes.

Q. So, in making his arrangements with the British company, it was provided that the British company should assume whatever obligations then existed under the contract of May 4, 1932, with Joyce and Selznick?

A. Yes.

(Testimony of Mr. Alfred Tregear Chenhalls.)

Redirect Examination

Referring to the \$150,000.00 investment in Mayflower Picture Corporation, Ltd., and as to whether it was a corporation like one that might merely go out and make a stock investment:— It was not a domestic investment. The corporation, in the same year, made investments of the kind you mention in gilt-edged securities, of \$175,000.00. That is, \$150,000.00 was invested in Mayflower Pictures, Ltd., sheerly for the purpose of making a profit, as large a profit as possible, both as regards income and capital. As regards income, there is no fixed rate of interest on this capital. It will just absorb as much of the profit as is left after paying the directors, fees, and income tax—that is, English [60] income tax. As regards capital, it will eventually be possible to sell out their shares at an enormous profit, such as is being done in the case of other organizations which start with smaller stakes. For instances, the United Artists started with an initial stake of \$5,000.00.

Recross Examination

Under our British system of taxation, we have no capital gains tax. So, when we sold this investment there would be no tax to pay. This money was used to purchase what we call “ordinary shares”; that is equivalent to what you call “common stock”.

Thereupon, the parties stipulated as follows: The taxpayer left England on May 5, 1934, arrived in Los Angeles on May 14th, and commenced acting in "The Barretts of Wimpole Street" on May 14, 1934, for Metro-Goldwyn-Mayer Corporation. With the exception of two retakes on July 6, 1934, and on July 17, 1934, the picture was finished on June 19, 1934. Taxpayer was engaged in making this picture five weeks and four days at \$8,000.00 per week. Metro-Goldwyn-Mayer Corporation paid as compensation \$45,333.33.

A copy of contract between Charles Laughton and Frank Joyce-Myron Selznick, Ltd., Agency, dated May 4, 1932, was received in evidence and is hereby included and will be designated as a part of this statement of evidence.

Whereupon, the following occurred: [61]

Mr. Baird: I next offer in evidence a copy of a night cable letter dated December 22, 1933, from Thalberg—I may say that that is the late Irving Thalberg of Metro-Goldwyn-Mayer—to Frank Joyce of the Joyce-Selznick Agency of London.

Mr. Milliken: May I ask the purpose for which that exhibit is offered?

Mr. Baird: This exhibit and the series which follows is offered to indicate to your Honor that prior to May, 1934, when the British contract was entered into between Laughton and his own British company, that negotiations

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had been pending for a long period of months between Laughton and Metro-Goldwyn-Mayer, and Paramount, and Joyce-Selznick, relative to his contemplated activities in the motion picture field, and negotiations had been carried on up to the point where they were finally consummated when the British company was organized, and it is in furtherance of our theory of the case, your Honor, that this is one of those cases where the petitioner by organizing a corporation seeks to transfer the tax liability on his personal services, which are unique in this particular field, and thus avoid tax liability. This is a link in the chain of circumstances in support of our theory of the case.

Mr. Milliken: As Mr. Baird has stated, as to this document which he offers, as well as a long series which I presume will follow——

Mr. Baird: (Interposing) I have a dozen of them.

Mr. Milliken: (continuing) —I do not object on the ground that they are not the original documents, because they are taken from our file which I gave him. So, I am sure they are authentic, but I object to them on the ground that this petitioner cannot be bound by what is heard of two people talking by cable, and Mr. Laughton was not a party to that conversation.

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Mr. Baird: Well, may I say that Mr. Laughton was, in effect, a party to the conversation, because we have here this exhibit A which shows full power and authority to represent Charles Laughton as manager and personal representative, and this is a communication between Irving Thalberg, one of the executives of Metro-Goldwyn-Mayer, and the Joyce Selznick Agency which the evidence now shows was Laughton's duly and regularly constituted agent.

Mr. Milliken: It makes mention of pictures which were never made.

Mr. Baird: That part is immaterial.

Mr. Milliken: And incidents which never occurred. [62]

The Member: Well, it will be identified as Respondent's Exhibit B and received in evidence for what it is worth.

(The said cable letter, so offered and received in evidence, was marked Respondent's Exhibit B, and made a part of this record.)

Mr. Milliken: If your Honor please, and then, I won't bother Mr. Baird any more, but I do object on the ground that it is incompetent, irrelevant and immaterial and proves no fact in this case that it is for a period of time prior to the organization of this corporation.

The Member: The objection will be over-

ruled, and exception noted, on each of the exhibits now being offered.

Counsel for the Commissioner offered in evidence a cablegram dated January 15, 1934, signed "Seljoy", and addressed to "Joysel, Beverly Hills". It was stipulated that "Seljoy" and "Joysel" are the cable names of the Joyce-Selznick people. Said cablegram was received in evidence as Commissioner's Exhibit C, and is hereby included and will be designated as a part of this statement of evidence.

A copy of a cablegram dated January 10, 1934, from London, from "Seljoy" to "Joysel", Beverly Hills, California, was received in evidence as Commissioner's Exhibit D, and is hereby included and will be designated as a part of this statement of evidence.

It was stipulated that the cable names of "Joysel" and "Seljoy" are the cable names used by the Frank Joyce-Myron Selznick agency, one representing the American office, and the other their London office.

A copy of a cablegram dated March 6, 1934, signed "Frank", and addressed to "Joysel, Beverly Hills, California," was received in evidence as Commissioner's [63] Exhibit E, and is hereby included and will be designated as a part of this statement of evidence.

A copy of a registered letter addressed by "Frank Joyce-Myron Selznick, Ltd.," to "Paramount Productions, Inc.," dated March 8, 1934, was received

in evidence as Commissioner's Exhibit F, and is hereby included and will be designated as a part of this statement of evidence.

A copy of a letter dated March 15, 1934, addressed to "Frank Joyce-Myron Selznick, Ltd.," at 9460 Wilshire Boulevard, Los Angeles, California, and signed "Paramount Productions, Inc., by Henry Herzbrun, Assistant Secretary," was received in evidence as Commissioner's Exhibit G, and is hereby included and will be designated as a part of this statement of evidence.

Counsel for the Commissioner offered in evidence a copy of a cablegram dated March 20, 1934, to "Laughton", signed "Frank". It was stipulated that "Frank" is Frank Joyce of Joyce-Selznick. Said cablegram was received in evidence as Commissioner's Exhibit H, and is hereby included and will be designated as a part of this statement of evidence.

Counsel for the Commissioner offered in evidence a copy of a cablegram dated April 13, 1934, addressed to Charles Laughton and signed "McCormick". It was stipulated that "McCormick" was an employee of the Selznick-Joyce Agency. Said cablegram was received in evidence as Commissioner's Exhibit I, and is hereby included and will be designated as a part of this statement of evidence. [64]

Counsel for the Commissioner offered in evidence a copy of a cablegram dated April 15, 1934, addressed to Charles Laughton, Burycourt Germyn

St., London, and signed "Myron", it being stipulated that that is Myron Selznick. Said cablegram was received in evidence as Commissioner's Exhibit J, and is hereby included and will be designated as a part of this statement of evidence.

Counsel for the Commissioner offered in evidence a copy of a cablegram dated April 17, 1934, addressed to Charles Laughton, Burycourt, Gernyn Street, London, England, and signed "Irving Thalberg". It was stipulated that "Irving Thalberg" was an official of Metro-Goldwyn-Mayer. Said cablegram was received in evidence as Commissioner's Exhibit K, and is hereby included and will be designated as a part of this statement of evidence.

A copy of a night letter cable dated April 24, 1934, addressed to "Seljoy" and signed "Joysel" was received in evidence as Commissioner's Exhibit L, and is hereby included and will be designated as a part of this statement of evidence.

Counsel for Commissioner offered in evidence a copy of a memorandum dated April 30, 1934, addressed to "Mr. McCormick", and signed by "Sig Marcus, Executive Office", it being stipulated that both the sender and the recipient are officials or employees of Joyce-Selznick Agency. Said memorandum was received in evidence as Commissioner's Exhibit M, and is hereby included and will be designated as a part of this statement of evidence. [65]

A copy of a cablegram dated April 14, 1934, addressed to "Joysel" and signed "Seljoy", was

received in evidence as Commissioner's Exhibit N, and is hereby included and will be designated as a part of this statement of evidence.

Counsel for the Commissioner offered in evidence a memorandum addressed to "Mr. Myron Selznick", dated May 14, 1934, and signed "Lovett". It was stipulated that "Lovett" is an employee of Joyce-Selznick Agency. Said memorandum was received in evidence as Commissioner's Exhibit O, and is hereby included and will be designated as a part of this statement of evidence.

Counsel for the Commissioner offered in evidence a copy of a memorandum addressed to "Messrs. McCormick, Deverich, Ham, Townsend, Bender and Simpson", dated May 15, 1934, and signed "Sig Marcus, Executive Office", it being stipulated that he is an official or agent of the Joyce-Selznick Agency. Said memorandum was received in evidence as Commissioner's Exhibit P, and is hereby included and will be designated as a part of this statement of evidence.

A copy of a cablegram dated May 18, 1934 addressed to "Seljoy", London, and signed "Joyssel", was received in evidence as Commissioner's Exhibit Q, and is hereby included and will be designated as a part of this statement of evidence.

Counsel for Commissioner offered in evidence a copy of a letter dated July 10, 1936, addressed to Charles Laughton, Esq., written by Mr. Chenhalls, the witness who was on the stand, and identified by him. Counsel for taxpayer [66] objected

to its admission on the grounds of immateriality and incompetency. The objection was overruled, an exception noted, and the letter was received in evidence as Commissioner's Exhibit R, and is hereby included and will be designated as a part of this statement of evidence. It was stipulated that the Board may disregard any pencil notations. [67]

The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, as attorney for the respondent on review.

(s) JOHN B. MILLIKEN

Attorney for Respondent on
Review.

The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

(Signed) J. P. WENCHEL.

RLW

Chief Counsel,

Bureau of Internal Revenue

Approved and ordered filed this 22nd day of Dec., 1939.

(s) WILLIAM W. ARNOLD

Member

[Endorsed]: U.S.B.T.A. Lodged Dec. 21, 1939.
Filed Dec. 22, 1939. [68]

[Title of Board and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel of record, that the following are true and material facts involved in this cause and may be found as facts by the Board of Tax Appeals.

I.

Charles Laughton, the petitioner herein, is a subject of Great Britain and has throughout his life, including at all times pertinent to this proceeding, been a resident of and domiciled in England. He is a motion picture actor, well known in both Great Britain and the United States.

II.

In 1932 he came to the United States and was engaged by Paramount-Publix Corporation, predecessor of Paramount Productions, Inc., in the following pictures: "Devil and the Deep", "Sign of the Cross", "Island of Lost Souls", "If I Had a Million". During said year he also played in "The Old Dark House" for Universal [69] Pictures Corporation under a loan of his services by Paramount-Publix Corporation to said Universal Pictures Corporation.

III.

On March 29, 1933, he entered into a contract with Paramount Productions, Inc., under the terms

of which there was produced in said year "White Woman". A true and correct copy of said contract is attached hereto, marked Exhibit "A", referred to and by this reference made a part hereof.

IV.

Under date of September 15, 1933, Paramount Productions, Inc. exercised its option as provided in Paragraph Twelfth of said contract of March 29, 1933, and notified the petitioner of its intention in reference thereto by letter, a true and correct copy of which is set forth herein:

"September 15, 1933.

"Mr. Charles Laughton,
Hollywood, California.

Dear Mr. Laughton:

Please take notice that under signed corporation hereby elects to exercise the option granted in Paragraph TWELFTH of an agreement between you and the undersigned corporation bearing date the 29th day of March, 1933, for your service in one motion picture photoplay to be produced between the periods commencing April 15, 1934, and terminating September 15, 1934, and upon all the other terms and conditions set forth in said agreement.

Very truly yours,

(signed) PARAMOUNT PRODUCTIONS
INC.

By ALBERT A. KAUFMAN,
Assistant Secretary." [70]

V.

After completing the picture referred to in Paragraph III above, the petitioner returned to England and on April 30, 1934, a corporation bearing the name of Motion Picture and Theatrical Industries Limited was organized under and by virtue of the laws of Great Britain, and specifically under the English Companies Act of 1929. A true and correct copy of said act is attached hereto, marked Exhibit "B", referred to and by this reference made a part hereof. A true and correct copy of the Memorandum and Articles of Association and the First Schedule to The Companies Act, 1929 (Table A) constituting Regulations for Management of a Company Limited by Shares is attached hereto, marked Exhibit "C", referred to and by this reference made a part hereof. The principal place of business of Motion Picture and Theatrical Industries Limited has been at all times since its formation and now is London, England. The petitioner has been at all times since the organization of said corporation the real beneficial owner of all of its outstanding stock except qualifying shares.

VI.

On May 4, 1934, in London, England, petitioner and Motion Picture and Theatrical Industries Limited executed a certain document, a true and correct copy of which is attached hereto, marked Exhibit "D", referred to and by this reference made a part hereof. [71]

VII.

Under date of May 4, 1934, F. M. Guedalla & Company, Solicitors of London, England, wrote to the petitioner's theatrical agents in the United States, Frank Joyce-Myron Selznick, Ltd., of Beverly Hills, California. A true and correct copy of said letter is attached hereto, marked Exhibit "E" referred to and by this reference made a part hereof.

VIII.

On May 22, 1934, Frank Joyce-Myron Selznick, Ltd., replied to the aforesaid letter. A true and correct copy of said reply is attached hereto, marked Exhibit "F", referred to and by this reference made a part hereof.

IX.

Under date of June 8, 1934, Loyd Wright wrote to Loeb, Walker & Loeb, attorneys for Metro-Goldwyn-Mayer Corporation, relative to services of the petitioner. A copy of said letter is attached hereto, marked Exhibit "G", referred to and by this reference made a part hereof.

X.

On the 5th day of July, 1934, Paramount Productions, Inc., and Charles Laughton, the petitioner herein, executed the following document:

[72]

“July 5, 1934.

“Mr. Charles Laughton,
Hollywood, California.

Dear Mr. Laughton:

This will confirm our understanding and it is hereby agreed that our agreement with you bearing date of the 29th day of March 1933, be and the same is hereby terminated as of July 4, 1934, at the end of such day, and we hereby respectively release and discharge each other from any and all obligations arising out of or that may arise out of the said agreement.

Kindly sign under the word ‘Accepted’ below and return this letter for our files, retaining the enclosed duplicate original.

Yours very truly,

PARAMOUNT PRODUCTIONS
INC.

By: HENRY HERZBRUN

Assistant Secretary.”

Accepted:

CHARLES LAUGHTON”

XI.

On the 5th day of July, 1934, Motion Picture and Theatrical Industries Limited entered into an agreement with Paramount Productions, Inc., relative to the services of the petitioner herein. A true and correct copy of said contract is attached hereto,

marked Exhibit "H", referred to and by this reference made a part hereof. [73]

XII.

On the 6th day of July, 1934, Motion Picture and Theatrical Industries Limited entered into an agreement with the said Metro-Goldwyn-Mayer Corporation relative to the services of the petitioner herein. A true and correct copy of said agreement is attached hereto, marked Exhibit "I", referred to any by this reference made a part hereof.

XIII.

Subsequently, and on the 25th day of August, 1934, said agreement entered into by and between Motion Picture and Theatrical Industries, Limited and Metro-Goldwyn-Mayer Corporation, as aforesaid, was altered by agreement of the parties thereto in several respects. A true and correct copy of the correspondence embodying the changes to be made in said agreement is attached hereto, marked Exhibit "J", referred to and by this reference made a part hereof.

Likewise, on said 25th day of August, 1934, Motion Picture and Theatrical Industries Limited and Metro-Goldwyn-Mayer Corporation reduced said prior agreement as amended to writing and executed said new agreement on said date. A true and correct copy of said agreement, dated the 25th day of August, 1934, is attached hereto, marked Ex-

hibit "K", referred to and by this reference made a part hereof.

XIV.

On the 21st day of December, 1934, Motion Picture and Theatrical Industries Limited entered into an agreement with Twentieth Century [74] Pictures, Inc., a corporation organized under the laws of New York, and having its principal place of business in the County of Los Angeles, State of California. A true and correct copy of said agreement is attached hereto, marked Exhibit "L", referred to and by this reference made a part hereof.

XV.

Pursuant to the terms of the contracts and agreements referred to herein, petitioner rendered services as a motion picture actor in the production of motion pictures in the studio of Metro-Goldwyn-Mayer Corporation, Twentieth Century Pictures, Inc., and Paramount Productions, Inc. from time to time during the years 1934 and 1935. For said services so rendered said studios paid to Motion Picture and Theatrical Industries Limited the following sums in the following calendar years:

	<u>1934</u>	<u>1935</u>
Metro-Goldwyn-Mayer Corporation	\$45,333.33	\$119,230.76
Paramount Productions, Inc.....	48,000.00	6,000.00
Twentieth Century Pictures, Inc.....		65,000.00
	<hr/>	<hr/>
	\$93,333.33	\$190,230.76

XVI.

Prior to turning over and paying to Motion Picture and Theatrical Industries Limited the sums set out in the foregoing paragraph, said [75] studios deducted from the sums paid over to Motion Picture and Theatrical Industries Limited as and for income tax withheld at the source, pursuant to Section 144 of the Revenue Act of 1934, the following sums at the following times:

	<u>1934</u>	<u>1935</u>
Metro-Goldwyn-Mayer Corporation	\$ 6,233.33	\$16,394.24
Paramount Productions, Inc.....	6,600.00	825.00
Twentieth Century Pictures, Inc.....		8,937.50
	<hr/>	<hr/>
Total.....	\$12,833.33	\$26,156.74

Said studios paid over to the Collector of Internal Revenue for the Sixth Internal Revenue Collection District of California said sums so withheld as income tax pursuant to Section 144 of the Revenue Act of 1934 during the years 1934 and 1935.

XVII.

At all times pertinent to this proceeding Loyd Wright was the duly appointed attorney in fact of Motion Picture and Theatrical Industries Limited; and that since February 19, 1935, the said

Loyd Wright has been the duly appointed attorney in fact of the petitioner.

CLAUDE I. PARKER

JOHN B. MILLIKEN

Counsel for Petitioner.

ACB/cvl 6/24/38

J. P. WENCHEL

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Respondent. [76]

EXHIBIT "A"

STIPULATION OF FACTS

Agreement made this 29th day of March, 1933, between Paramount Productions, Inc., a Delaware corporation, hereinafter referred to as the "Corporation", and Charles Laughton, hereinafter referred to as the "Artist":

First: The Corporation hereby employs the Artist to act, play, perform and take part in two (2) motion picture photoplays, with the photographing of which sound, including spoken words, songs, and music may be synchronously recorded by mechanical and/or electrical means, and in rehearsals, acts, parts and scenes thereof, including the rendition of speaking parts and musical numbers for and as directed by the Corporation at its studio at Hollywood, California, and at such studios and on such locations as the Corporation

may from time to time designate, which two (2) motion picture photoplays are to be produced during the period commencing on or about the 12th day of June, 1933, (upon which date the Artist agrees to appear at the Studios of the Corporation at Hollywood, California, ready to render his services in the first motion picture production to be made pursuant hereto), and terminating on the 15th day of September, 1933.

Second: The Artist hereby accepts the said employment and agrees to give his entire time and attention and devote his best talents and abilities to the services of the Corporation and/or such other person, firm or corporation as, when and where the Corporation may direct during the term of his agreement.

Third: In full consideration for the services to be rendered by the Artist pursuant hereto, and for the option hereinafter granted, the Corporation agrees to pay to the Artist and the Artist agrees to accept salary at the rate of Two Thousand Five Hundred (\$2,500.00) Dollars per week for not less than five (5) weeks for the services of the Artist in the first production; [77] and salary at the rate of Two Thousand Seven Hundred Fifty (\$2,750.00) Dollars per week for not less than five (5) weeks for the services of the Artist in the second production, payments of which salary are to be made to the Artist on the Wednesday following the end of each week for which the Artist shall be entitled to salary pursuant hereto.

Fourth: If the Artist's services shall be required in the respective productions in excess of the number of weeks specified therefor, the Artist agrees to continue to render his services for such additional consecutive period with respect to each production as the Corporation shall require, and the salary agreed to be paid to the Artist for the respective productions shall be paid to him until his services in each production are completed. For any incomplete week after the last full week, however, the Artist's salary shall be pro-rated on the basis of a six-day week. It is understood, however, that for the purposes hereof, the Artist shall not be deemed to be appearing in any production when he shall appear for retakes therefor.

Fifth: The Artist agrees to appear for retakes and/or re-recording of any parts of the motion picture productions to be made hereunder, if any should be necessary in the opinion of the Corporation, after the completion of each of the said productions, at a daily salary of one-sixth of that received by him for his services during the actual production of the motion picture photoplay for which such retakes and/or re-recording may be made. The Artist agrees to appear at the studios of the Corporation for such retakes and/or re-recording within a reasonable time after notice of such necessity shall have been given to him.

Sixth: The Artist hereby grants to the Corporation the exclusive right to use his name, photograph and likeness (and any simulation thereof)

and to record, reproduce, amplify and simulate his voice by electrical and/or mechanical means in each [78] of the motion picture productions to be made hereunder and in advertising, exploiting and exhibiting the same.

Seventh: The Artist agrees that during the intervening period between the date of the completion of his services in the first and/or second motion picture photoplays to be made hereunder and the 15th day of September, 1933, and/or if the Corporation shall exercise the option hereinafter provided for, from the date of the exercise of such option until the 15th day of September, 1934, he will not engage in any act or performance for the production of any other motion picture photoplay for any other person, firm or corporation without first submitting to the Corporation in writing the terms of any bona-fide offer which is acceptable to him and which he may receive from any person, firm or corporation other than the Corporation, to appear in motion pictures. The Corporation may accept such terms within ten days after such submission, and upon such acceptance the Corporation and the Artist will immediately execute a contract with respect to such additional motion picture or motion pictures embodying the agreed terms. Should the Corporation not accept such terms, then the Artist shall be free to render his services to such other person, firm, or corporation for such production, provided that the role in which he may be cast therein and the billing to be accorded him in con-

nection with such motion picture photoplay shall be satisfactory to and approved by the Corporation, which approval shall not be unreasonably withheld, and provided further that the Corporation for which he may so appear shall be one whose pictures are released in first-class houses in key cities in the United States, and provided also that his appearance in any such production shall in no way interfere with his rendition of his services to the Corporation pursuant hereto. [79]

The foregoing provision, however, shall not be construed to prevent the Artist from appearing on the legitimate stage in the performance of plays by living actors during the periods aforementioned, provided that such appearance does not interfere with the full rendition of his services for the corporation pursuant hereto.

Eighth: The Artist further agrees to speak the dialogue of any parts or roles in which he may be cast pursuant hereto, at such times and places designated by the Corporation in radio broadcasting, either singly or in conjunction with other players employed by the Corporation, for the purpose of advertising and exploiting any motion picture productions in which he may appear, provided the other engagements of the Artist so permit, and the Artist further grants to the Corporation the right to broadcast by radio broadcasting from the records made by the Artist pursuant hereto.

Ninth: The Corporation agrees to furnish the Artist and his wife with first-class transportation

from London, England, to Los Angeles, California, with drawing-room from New York City, New York to Los Angeles, California, and provided the Artist returns to London, England, immediately upon the completion of his engagement for the Corporation, the Corporation agrees to furnish the Artist and his wife with like transportation from Los Angeles, California, to London, England.

The Corporation agrees to provide the Artist with first-class transportation whenever the Artist is required to travel in rendering his services for the Corporation and to defray his necessary living expenses when rendering services hereunder on location, except when in or near the cities of Los Angeles, California, or New York, New York.

Tenth: If the Artist should be unable or [80] should fail to render his services in any of the said productions continuously after the photographing of the same shall have commenced, or to proceed on the date set by the Corporation for such commencement, the Corporation may, at its election, terminate this agreement or, by giving the Artist written notice of its intention so to do, extend the pending period hereof for a period equal to the time during which such disability or non-performance shall continue and the date for the exercise of the option herein contained shall be correspondingly postponed; but in the event such disability or non-performance shall be due to illness, injury, or accident then the Corporation may not terminate this

agreement unless such illness, injury or accident shall continue for one (1) week. Such election shall be without prejudice to any right or remedy of the Corporation for failure to perform on the part of the Artist. Should the Corporation pay the Artist salary during any period of incapacity or failure to perform the time of such non-performance shall, nevertheless, be added to any period so interrupted and the salary paid to the Artist during such non-performance shall be treated as payment for the Artist's services during the time so added. The payment of salary to the Artist during any such period of incapacity or failure to perform shall be wholly optional with the Corporation and shall not constitute a waiver of any right hereunder or any provision hereof.

Eleventh: Should the Corporation be prevented from making motion pictures by epidemic, fire, action of the elements, strikes, labor disputes, governmental order, court order, the act of God, or a public enemy, war, riots, civil commition, or other causes beyond the control of the Corporation, whether of the same or any other nature, then the operation of this agreement may be suspended during such interruption. Upon the resumption of work by the Corporation, a period of time equal to the [81] period of such interruption shall be added at the end of the period so interrupted and the date for the exercise of the option herein contained shall be correspondingly postponed. If such interruption

shall continue beyond six (6) weeks, the Artist shall be free to terminate this agreement, unless the Corporation shall then resume payment hereunder.

Twelfth: The Artist hereby grants to the Corporation an option upon the Artist's exclusive services in one (1) motion picture photoplay to be produced between April 15, 1934, and September 15, 1934, at the salary at the rate of Three Thousand (\$3,000.00) Dollars per week for not less than five (5) weeks for his services in such production.

The Corporation may exercise the foregoing option by giving the Artist written notice of its intention so to do not later than September 15, 1933. Thereupon the Artist and the Corporation shall be obligated to each other upon the terms and conditions herein provided, except for the salary provision specified with reference to the said option period.

Provided the Corporation shall have exercised the foregoing option, the Artist agrees to give the Corporation written notice not later than March 1, 1934, of the date upon which the Artist shall be ready to render his services pursuant to such option and after receipt of such notice, but not later than April 1, 1934, immediately following, the Corporation agrees to give the Artist written notice of the date during such option period upon which the Artist shall report at the Studios designated by the Corporation, ready to render his services during such period.

Thirteenth: Any notice required to be given hereunder by the Corporation to the Artist shall be sufficiently given by mailing the same by registered mail in a post-paid wrapper, or by [82] telegraphic communication, addressed to the Artist in care of Frank Joyce-Myron Selznick Ltd., the Artist's agents, or by personally delivering the same to said Frank Joyce-Myron Selznick Ltd. The date of the mailing of notice of exercise of option or notice to appear, or the personal delivery thereof, shall be the date of the exercise of such option or the giving of such notice.

Any notice required to be given to the Corporation by the Artist shall be given by mailing the same by registered mail in a postpaid wrapper, or by telegraphic communication, addressed to the Corporation at 5451 Marathon Street, Hollywood, California.

Fourteenth: The Artist hereby warrants that he is free to enter into this agreement and render the services pursuant hereto.

Fifteenth: It is mutually understood and agreed that the Artist's services are extraordinary, unique and not replaceable, and that there is no adequate remedy at law for a breach of this agreement by the Artist; and that the Corporation, in the event of such breach or threatened or attempted breach, by the Artist, shall be entitled to equitable relief by way of injunction or otherwise.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written.

PARAMOUNT PRODUCTIONS, INC.

By: (Signed) E. COHEN

Vice President

(Signed) CHARLES LAUGHTON (L. S.) [83]

Dated 29th day of March, 1933.

Paramount Productions Inc.

and

Charles Laughton

Copy

AGREEMENT

F. M. Guedalla & Co.,
Grand Buildings,
Trafalgar Square,
W. C. 2. [84]

EXHIBIT "D"

STIPULATION OF FACTS

This Agreement made in duplicate the fourth day of May 1934 Between Motion Picture and Theatrical Industries Limited of 6, Talbot House, 98 St. Martin's Lane in the County of London (hereinafter called "the Employer") of the one part and Charles Laughton of 34, Gordon Square in the

County of London (hereinafter called "the Employee") of the other part.

Whereas the Employee in virtue of a contract made between him and London Film Productions Limited on the 3rd November 1933 is entitled to a sum equal to 10% of the Producer's gross receipts for the film called "The Private Life of Henry VIII" in the United States of America and in the British Empire (exclusive of the British Isles) and as part of the consideration hereinafter appearing has agreed to assign such percentage to the Employer.

And Whereas the Employee entered into an agreement dated the 26th February 1934 with the said London Film Productions Limited whereby subject to the terms and conditions thereof he has agreed to take part in films which London Film Productions Limited proposes to produce at future dates and the Employee as part of the consideration hereinafter appearing has agreed to assign to the Employer the benefits and any monies arising out of the said agreement of the 26th February 1934 a copy of which has been supplied (as the Employer acknowledges) by the Employee to the Employer signed for identification by the Employee.

And Whereas at the request of the Employer the Employee is about to proceed to Los Angeles in the State of California to render such services as may be reasonably directed by the Employer but subject as hereinafter provided in various theatrical or cinematographic activities in the United

States of America or elsewhere outside the British Isles.

Now It Is Hereby Agreed as follows:

1. For and in consideration of the premises and of Five Shillings paid (as is hereby acknowledged) by each party to the other party the Employer is to have the sole and exclusive services of the Employee and the Employee will give his sole and exclusive services to the Employer for a period of five years from the date of this agreement, the Employer undertaking and hereby agreeing to pay every week to the Employee at such Bank or Banks as from time to time the Employee may direct the sum of £150, time being of the essence of this agreement, the Employee having the right to determine same peremptorily if the Employer at any time shall be in arrears as to the payment of any weekly sum without justification for a period exceeding 14 days.

2. In consideration of the premises the Employer will forthwith pay to the Employee to such Bank or Banks as he shall designate an advance sum equivalent to £3,900 representing 26 weekly sums, of which £1,500 shall be transmitted to Hollywood at the Employer's expense. [85] In the case of any payments to Banks outside the British Isles the Employer will pay the expenses entailed by remittance, exchange and the cost thereof. From time to time as occasion may arise the Employee shall have the right to demand payment in advance for any period not exceeding fifteen weeks at any time

from the time that he shall notify such requirement to the Employer.

3. During the period of 5 years as from the date of this agreement the Employee subject as herein-after mentioned in Clauses 13 and 14 hereof will perform and render his services as an actor in such cinematographic and theatrical productions and be otherwise associated with same as may be directed and required by the Employer.

The Employee will make personal appearances in motion picture theatres and/or other places of entertainment or as a radio performer not only by broadcasting in person but also by making electrical transcriptions and by any other present or future methods or means and will render his services as an actor in television productions and will render services in connection with broadcasting and/or transmission of his likeness or voice by means of television, radio or otherwise. He will promptly and faithfully comply with all reasonable directions, requests, rules and regulations made by the Employer or any Producer with whom the Employer shall be in contact in connection with the services to be performed by the Employee.

During the term of this Agreement the Employee will not render his services as an actor, or pose, act, appear, write, direct or render any other services except as provided in Clause 13 hereof in any way connected with motion pictures or the theatre or in connection with any of his above-mentioned services otherwise than as may be ap-

proved and directed by the Employer without the written consent of the Employer first had and obtained.

4. The Employee will not consent to nor permit any other person to advertise, announce or make known, directly or indirectly, by paid advertisements, press notices, or otherwise, that he has contracted to do or perform any act or services contrary to the terms of this agreement. The Employer shall have the right to institute any legal proceedings in the name of the Employee or otherwise to prevent such acts or any of them. The Employer from time to time and at all times in lending the services of the Employee to third parties shall give third parties if desirable or necessary similar rights to those mentioned in this clause.

5. The Employee expressly gives and grants to the Employer or third parties with whom it may contract for the purpose the sole and exclusive right to photograph and/or otherwise reproduce any and all of his acts, poses, plays and appearances of all kinds during the term hereof and to record his voice in any theatrical or cinematographic productions or for the purposes of radio broadcasting and television as well as in connection with the advertising and/or exploitation of any service which may be required of the Employee hereunder. The Employee shall have the right to "double" or "dub" [86] the acts, poses, plays and appearances of the Employee as well as his voice and all sound effects to be produced by the Em-

ployer, such "doubling" or "dubbing" to be in English and/or in any other language or languages designated or desired by the Employer or third parties contracting with it as may be directed by the Employer. The Employee shall at no time during the term of this Agreement grant similar rights to or permit any person, firm or Corporation other than the Employer or persons in contact with it to make use of his name or to make use of or distribute his pictures, photographs or other reproductions of his physical likeness or of his voice and authorises the Employer in the name of the Employee or otherwise to institute any proper legal proceedings to prevent such acts or any of them. Any copyright of and in any films or photographs of any work done by the Employee hereunder shall be vested in the Employer. The Employee by his signature hereto hereby gives the Employer any and all consents which the Employer may require under the Dramatic & Musical Performance Act 1925 to make use of the services given by the Employee and mutatis mutandis similar consents with regard to services outside the United Kingdom and Northern Ireland.

6. In no case will the Employee be bound to give any services as aforesaid except in connection with a theme and treatment of such theme and general casting and dates for production of a film or theatrical or other performance as may be reasonably required on his part, and more particularly as concerns the part which he shall be requested to

enact, the same is to be a part which shall be agreeable to him, and the Director of the film or the Producer of the theatrical performance is to be a person who is also agreeable to him.

7. The Employee hereby expressly gives and grants to the Employer the right to lend the services of the Employee to any other person or persons firm or company in any capacity in which the Employee is required to render his services hereunder upon the distinct understanding and condition, however, that this contract shall nevertheless continue in full force and effect and that the Employee shall not be required to do any act or perform any services contrary to the provisions of this agreement. Any breach by any such person or persons, firm or company of any of the terms of this agreement shall not constitute a breach by the Employer of its obligations or covenants in this agreement, nor shall the Employee have the right to terminate this agreement by reason of any such breach by any such person or persons, firm or company. In the event that the Employee is required to render services to any other person or persons, firm or company as herein provided he agrees to render same to the best of his ability. Should the services of the Employee be loaned to any other person or persons, firm or company, hereunder such other person or persons, firm or company, shall be entitled to the same incidental advertising and other rights in connection with services rendered by the Employee for such other person or persons, firm or company as

are given to the Employer under the terms of this agreement. While the Employer is entitled to [87] make such terms and conditions with any such person or persons, firm or company as above provided, the Employee shall not be bound to any such person or persons, firm or company unless he duly and regularly receives from the Employer at their due dates the above-mentioned weekly sums. In entering into any such contracts with third parties, videlicet such person or persons, firm or company, the Employer will be acting at its own risk as to whether it makes a profit or a loss on any particular transaction.

8. In the event that the Employer desires at any time or from time to time to apply, in its own name or otherwise, but at its own expense, for life, health, accident or other insurance covering the Employee, the Employee agrees that the Employer may do so and may take out such insurance for any sum which the Employer may deem necessary to protect its interests hereunder. The Employee shall have no right, title or interest in or to such insurance, but agrees nevertheless to assist the Employer in procuring the same by submitting to the usual and customary medical and other examinations and by signing such applications and other instruments in writing as may reasonably be required by such insurance company or companies.

9. In the event that by reason of mental or physical disability or otherwise the Employee shall

be incapacitated from fully performing the terms of this agreement or complying with each and all of his obligations hereunder or in the event that he suffer any facial or physical disfigurement materially detracting from his appearance on screen or stage or interfering with his ability to perform properly his required services hereunder, or in the event that he suffer any impairment of his voice, then in any of the said events this agreement may be suspended by the Employer during the period of such disability or incapacity or facial or physical disfigurement or impairment of voice, and no compensation need be paid to the Employee during the period of such suspension. The term of this agreement and all its provisions herein contained may be extended at the option of the Employer for a period equivalent to the period of such suspension. If this agreement be suspended as aforesaid, and if the term hereof be extended pursuant to the provisions of the foregoing sentence, and if the Employer shall have paid the Employee any compensation during all or any part of such suspension, then and in that event the Employer shall not be obliged to pay to the Employee any compensation whatsoever during such portion of such extension as shall be equivalent in time to the period for which the Employer has compensated the Employee during such suspension. The Employer at its option in the event of the continuation of such disability or incapacity or facial or physical disfigurement or impairment of

voice for a period or aggregate of periods in excess of three months during the term hereof may cancel and terminate this agreement.

10. No waiver by the Employer of any breach of any covenant or provisions of this agreement shall be deemed to be a waiver of any [88] preceding or succeeding breach of the same or any other covenant or provision.

11. It is distinctly understood and agreed by and between the parties hereto that the services to be rendered by the Employee under the terms hereof and the rights and privileges granted to the Employer by the Employee under the terms hereof are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breach by the Employee of any of the provisions herein contained will cause the Employer irredeemable injury and damage. The Employee therefore expressly agrees that the Employer shall be entitled to injunctive, mandatory and other equitable relief to prevent a breach of this agreement by the Employee apart from any other rights and remedies available to the Employer including the Employer's right to determine this agreement in part or altogether, such rights and remedies being cumulative and none of them exclusive of the others or of any right or priority allowed by law.

12. In consideration of the premises the Employee hereby assigns to the Employer any benefits

and rights which the Employee has or may have under and arising from the two said agreements of the 3rd November 1933 and 26th February 1934 with London Film Productions Limited, giving (as he hereby does) to the Employer the right to vary or modify or release the said agreements or either of them as in any way may seem fit to the Employer, the Employer having the right at any time to notify London Film Productions Limited as to these assignments or either of them and to require London Film Productions Limited to accept notice of such assignments and to pay all monies and render all accounts in connection therewith to the Employer.

13. The Employee reserves the right for periods not exceeding four months at a time and not more than eight months in any two calendar years (including for that purpose the remainder of 1934 or beginning of 1939) to act on the stage in theatrical performances as and where he shall think fit with living persons and before audiences of living persons Provided Always that all salaries, emoluments or advantages (if any) derived or deemed to be derived from such theatrical arrangements shall be paid direct to the Employer and that the Employer shall be a party to any contract (the same to be in writing) relating to any such theatrical arrangements, the Employer being under obligation notwithstanding the amount of any such salaries, emoluments, or advantages (be they lower or

higher) to continue the payments of the weekly sums of £150.

14. The Employer in making arrangements for the Employee's services with third parties or in direct employment by the Employer will make reasonable arrangements from time to time so that the Employee if he so wishes shall have at least six weeks continuous holiday in each calendar year, shorter holidays to be arranged to mutual satisfaction between the Employer and the Employee provided that the Employee during such holidays shall be entitled to full pay of all weekly sums hereunder but the Employee shall duly carry out all obligations im- [89] posed upon him in accordance with its contracts with third parties or if the Employer shall itself be conducting motion picture or theatrical activities the Employee will carry out his proper obligations to the Employer in connection therewith and only take his said holidays subject thereto.

15. Nothing in this agreement shall be contrary to the proposition that from time to time it is contemplated that the Employer itself will be engaging in motion picture or theatrical activities in the British Isles in connection with which it shall employ the Employee and in no case will it engage in any motion picture or theatrical activities in which there shall be a male principal part without employing the Employee in the enactment thereof unless the Employee expressly and in writing shall

assent to the Employer in any such activities employing some other actor.

16. The Employer agrees to furnish all modern wardrobe and wearing apparel (as well as so-called "character" or "period" costumes) necessary for any or all roles to be performed by the Employee hereunder. All costumes apparel and other articles furnished or paid for by the Employer pursuant to the terms of this agreement or otherwise shall be and remain the property of the Employer and shall be returned promptly to it.

17. In connection with any services to be rendered by the *the* Employee outside the British Isles, unless the Employer can recover same or part of same by arrangements with third parties and to the extent to which the Employer shall fail or be unable to obtain allowances from third parties, the Employee while outside the British Isles shall be paid his ordinary living expenses while engaged in and during the rendering of such services and with regard to journeys outside the British Isles made to and fro for the purposes of any such services the Employer will compensate the Employee, the Employee being entitled for that purpose to all reasonable expenses entailed by taking his wife and/or family with him and also his valet, and any special outlays in connection with any such services outside the British Isles; but in the British Isles and during holidays the Employee will be liable for his travelling and living expenses and the expenses of any valet or other servant and of his wife and family

unless from time to time as may be reasonably otherwise arranged with the Employer according to the nature and conditions of the special employment.

In the event of the Employer arranging that any third party shall pay all or any of these expenses direct to the Employee or in the event of the Employee obtaining payment or provision of any or all of such expenses from any third party, the Employee will give credit accordingly to the Employer and will at all times promptly inform the Employer with regard to any such payments or provision at the hands of third parties. Any monies due to the Employee hereunder shall be paid by the Employer promptly on demand, accompanied by the necessary accounts and vouchers, as soon as it shall receive such relative accounts and vouchers. [90]

18. In consideration of the premises the Employer will assume the obligations of the Employee to Myron Selznick-Frank Joyce Incorporated so far as at present unfulfilled by him.

19. If during the continuance of this Agreement or after the determination or rescission thereof any difference shall arise between the Employer or Employee as to the meaning or effect of this Agreement or as to the rights or liabilities of either party hereto or in regard to the construction of any of the clauses or provisions covenants stipulations or conditions or schedules herein contained or as to anything to be made done or permitted or not to be

made done or permitted in pursuance thereof or to any other matters relating to this Agreement then such difference shall forthwith be referred to arbitration in manner hereinafter provided namely:

- (a) The parties in difference shall agree on and appoint some Barrister-at-law Solicitor chartered or incorporated Accountant or Surveyor or Architect of at least ten years standing in the exercise of his profession as a single arbitrator or failing agreement in this respect within seven days of the notice given in writing by one party to the other requiring such agreement then at the request of any party hereto in difference the difference shall be referred to a single Arbitrator being such a Barrister or Solicitor as aforesaid to be nominated and appointed (within 14 days from receiving such request) by the President for the time being of the Law Society.
- (b) The said Arbitrator may make use of professional assistance and shall be entitled to inspect and on application to order in favour of any party inspection of the different parties' books and documents and to have copies thereof made and supplied and to order discovery by them of any material documents and entries in such books and may require the personal attendance and examination on oath of the parties

their directors their representatives or any of their employees and may arrange for evidence if desirable or necessary to be given outside London.

- (c) The arbitration shall be held in London.
- (d) Subject as above such reference shall be conducted as the Arbitrator in his absolute discretion shall decide.
- (e) Neither of the parties shall be entitled to direct the Arbitrator to “state” (but the Arbitrator of his own volition or judgment may “state”) a case for the opinion of the High Court of Justice nor shall there be any appeal on matters of fact from the award of the Arbitrator.

Provided always however that if it is necessary to enforce the rights of any of the parties hereto or the [91] award of the Arbitrator by any injunction or order for specific performance or other equitable relief or by any judgment mandatory process or execution the parties shall have liberty to apply at any appropriate stage of the proceedings concerned to the High Court of Justice.

This Clause shall not apply to proceedings for the recovery of money due from one party to the other and which may properly be the subject of a claim under Order III Rule 6 and Order XIV of the Rules of the Supreme Court.

20. Any notice to be given or served hereunder shall be addressed to or served on the Employer at its registered office and to or on the Employee at 34, Gordon Square aforesaid, or such other address as from time to time the Employee may furnish to the Employer for such purpose, or in default of any such furnishing at such address at the last known address of the Employee. Any such notice shall be deemed to have been effectively given if sent by registered post to any such address and proof that the letter was properly addressed and posted shall be sufficient evidence of service. No notice whether delivered by hand or sent by post if received on a Saturday, Sunday or public holiday shall be deemed to be served on any such day, but shall be deemed to be served on the next subsequent weekday.

In Witness whereof Motion Picture and Theatrical Industries Limited has caused its Common Seal to be hereunto affixed and Charles Laughton has hereunto set his hand and seal the day and year first above written.

The Common Seal of Motion Picture and Theatrical Industries Limited was hereunto affixed in the presence of

[Seal] F. M. GUEDALLA (signed)

R. H. SHIPLEY (signed)

Directors

W. C. OSWALD (signed)

Secretary

Signed Sealed and Delivered by the above named
Charles Laughton in the presence of

AGNES ASHTON,

311 Ivydale Road,

Waverley Park, S. E. 15.

Solicitor's Secretary.

(signed) CHARLES LAUGHTON [92]

EXHIBIT "E"

STIPULATION OF FACTS

F. M. Guedalla & Co.

Solicitors

F. M. Guedalla

Grand Buildings,

Trafalgar Square

London W. C. 2

4th May 1934

Frank Joyce-Myron Selznick, Ltd.,

9460 Wilshire Boulevard,

Beverly Hills, California.

Gentlemen:

Charles Laughton

Motion Picture & Theatrical Industries, Ltd.

For your information and records we herewith
beg to enclose copy Agreement of the 4th May, 1934
entered into between Mr. Charles Laughton and
Motion Picture & Theatrical Industries Ltd. (here-
inafter called "the Company").

If Mr. Joyce (as we hope) when this reaches you is well enough, he will remember the conversations he has had on this subject with Mr. Guedalla. He stated that your firm would assist Mr. Laughton to the best of its ability.

We are sending a copy of this letter to Myron Selznick-Frank Joyce (of England) Limited and asking Mr. Votion, if he has a copy of Mr. Laughton's Contract with you, to let us have same.

Mr. Joyce, before he left England, promised Mr. Guedalla a fair copy. In the event (as we anticipate) that Mr. Votion has not got a copy, perhaps you would be good enough to let us have a certified correct copy of Mr. Laughton's Contract with you. You will observe that the benefits and obligations are taken over by the Company, and the Company will enter into any requisite contract with you to give effect to this arrangement.

We are asking Mr. Loyd Wright to be good enough to act for the Company and Mr. Laughton in drawing the necessary contract with you. Mr. Joyce has already informed us that Mr. Loyd Wright is a Director of, as well as Counsel to your Company, but we see no reason (unless Mr. Loyd Wright objects to acting for everybody) why, in this particular matter, he should not act for all parties concerned. If he has any doubts on this matter we should be much obliged if he would turn over the legal representation in this matter of the Company and Mr. Laughton to the Counsel for the United Artists Corporation, with whom we believe

both he and you act in many matters very amicably.

You will observe as regards "Henry VIII" and the three future films for London Film Productions that the benefits and obligations of those Agreements, so far as unfulfilled, are turned over by Mr. Laughton to the Company; i.e. the Company will now collect the percentages on "Henry VIII", and we are about to notify London Film Productions to that effect. [93]

We will inform London Film Productions that we recognize your firm (including Myron Selznick-Frank Joyce (of England) Limited) as the Company's agents for the purpose, so that it will be in order that in making remittances to the Company you will (as we understand, as provided in your contract) deduct your 10% commission en route. We imagine in fact that it will be Myron-Selznick-Frank Joyce (of England) Limited which will handle this matter for you, and we are aware that Mr. Votion has been trying to get an accounting and cheque for percentages on "Henry VIII" down to date.

Mr. Laughton, on the 2nd instant, saw Mr. Korda, who told him that a cheque was waiting for the past two weeks and that Mr. George (the secretary of London Film Productions) would be communicating with Mr. Guedalla on the telephone yesterday morning, but down to the moment of dictating this letter we have not heard from Mr. George. We will be taking up the matter with Mr. Votion next week.

Mr. Korda, we believe, is not best pleased that Mr. Guedalla has been requested to attend to this matter with Mr. Votion. A few days ago Mr. Korda said that he would not have Mr. Laughton's Chartered Accountants, or your Accountants, to investigate accounts. Mr. Guedalla replied that the Accountants who would be employed for the purpose (who, by coincidence, also happen to be your own Accountants,) would be Messrs. Price Waterhouse & Co. Mr. Korda said that he had no objection to Price Waterhouse & Co. As Accountants of United Artists Corporation they have every access and information as to what is paid or credited by United Artists in respect of this film to London Film Productions. So far as Canada is concerned, they will have to see the accounts of The Anglo-Canadian Distributors Ltd. because United Artists do not distribute the film in Canada.

With regard to the distribution of the film on the Continent or in foreign versions Mr. Laughton and the Company are not interested therein.

As the Producer's share of revenues of "Henry VIII" has been pledged up to the hilt, Mr. Guedalla has expressed personal annoyance to Mr. Korda that Mr. Laughton was not protected ahead of or even *pari passu* with the financiers. He stated that this makes it all the more necessary that as and when the relative monies are paid or credited to London Film Productions, even if the financiers collect same, the proper percentages is simultaneously to be paid to the Company.

We are not satisfied with the Agreement of the 26th February 1934, and must take up the matter with Mr. Votion and Mr. Korda as to the modification thereof.

It will be necessary at all times for Mr. Loyd Wright and you carefully to study same when making any contracts for Mr. Laughton with Metro-Goldwyn-, Paramount, or other film Producers at Hollywood.

The Company will be prepared to loan Mr. Laughton's services to Metro-Goldwyn, Paramount or other film Producers. The contract in each case must be made with the company and in order that the Producer will make sure of Mr. Laughton's services no doubt he will be [94] made a party to any such contract, or, alternatively, it can be arranged that at the foot of the contract he can sign that he confirms and guarantees so far as he is personally concerned the obligations of the contract. In other words, that he will play in a stated film at a stated time and will not play for anybody else during the said period. But all monies payable in respect of his services will be collected by you and will be paid direct to the Company's account at the Bank of America, or at such other Bank as from time to time may hereafter be notified to you.

If, (which we do not anticipate) the Producer wishes to pay direct, then equally the Producer will pay stipulated sums to the Company's account at the Bank of America, and the Company will, as and

when notified of such payments, cable the Bank of America to pay to you your stipulated percentage.

For various reasons we must stipulate that no contract shall be made with the Producer by you on behalf of the Company unless its principal terms have first been notified to and accepted by the Company. We are going to send you, in the next mail or two, the registered cable address of the Company. You will observe in the enclosure what is its postal address.

For your information the Directors of the Company are:

Mr. Florance Montefiore Guedalla

Mr. Ronald Harry Shipley

and Mr. Francis Basil Guedalla

The Secretary of the Company is Mr. William C. Oswald.

We are sending to Mr. Loyd Wright by the same mail two prints of the Memorandum & Articles of Association of the Company, in case it is necessary for him ever to show same to you or to any Producer or any Californian Bank.

You will observe in Clause 17 of the enclosure that the Company is under obligation to pay Mr. Laughton's ordinary living expenses, and also transportation expenses while out of the British Isles and engaged on the business of the Company. In connection with certain figures which have been mentioned by Mr. Laughton to us as regards his prospective engagements to Metro-Goldwyn or

Paramount, it is very necessary if you can arrange it, that the Company should be recouped some of this special expenditure. In practically every contract in connection with which we have acted for an American coming over here, the American has always stipulated that in addition to his or her agreed fees he or she is to have these extra expenses provided by the Producer. Sometimes it is arranged that the Producer makes a special agreed allowance for the living expenses, as well as or apart from the travelling expenses.

Mr. Laughton informs us that Metro-Goldwyn has in fact paid for a cabin on the "Berengaria" for himself and his wife, and handed him the transportation tickets, but he is ignorant whether it is part of the contract that *Metro-Goldwyn* should pay him this, or whether it is going to try and [95] deduct the same in connection with the salary which will have to be paid to the Company.

We have to impress upon you, for many reasons, that you must see that contracts for the employment of Mr. Laughton's services are entered into direct with the Company. You will note that according to the enclosed contract, week in and week out for five years the Company is under obligation to pay Mr. Laughton a fixed salary. We have left the amount in blank, because this is the private concern of Mr. Laughton and the Company. In the same way, certain advances which have been made to Mr. Laughton to deal with certain matters in this country and at Hollywood are also left in blank.

If you wish to cable direct to Mr. Guedalla, you will note that our cable address is: "Guedalla, London".

With regard to any contract entered into for the employment of Mr. Laughton's services, the same, strictly speaking, ought to come over here for the Company's approval and execution, but if matters have to be arranged in a hurry it may be that we can arrange that the Company shall send a power of attorney to Mr. Loyd Wright or some other approved person (not being Mr. Laughton). Mr. Guedalla very frequently, without holding any power of attorney for them, signs contracts on behalf of United Artists or Twentieth Century Pictures Inc. or other American concerns as Attorney in Fact: they being very confident that he will have drawn up the contracts in the way they approve, allow him to warrant his title to and sign on their behalf. It is a responsible position, and is the result of lengthy intercourse with the principal officials of the said concerns. It might be that in case of great necessity Mr. Loyd Wright would be willing to sign as Attorney in Fact any contract which you and Mr. Loyd Wright were satisfied would be acceptable to the Company, but in all such cases we would have to ask that the authority to sign the instrument should be sent in writing from London, either by letter or by cable, by the Company or by ourselves as Solicitors for the Company, so that in turn you as agent for the Company would be authorized to conclude the negotiation locally.

It will be very necessary for the Company, as well as Mr. Laughton, both in the United States and in this country, always to have evidence as to the course of the negotiations and the reason why and the manner in which a contract is concluded on the Company's behalf, without its direct signature, in the United States.

With regard to the Paramount Contract, we would be obliged if Paramount would sign a fresh contract with the Company, repeating the essential terms of it, but not seeking in any way to vary it, otherwise we would have to get Mr. Laughton to assign the benefits of it to the Company.

We should be obliged if you would kindly at once let us have a copy of the said contract so that we can be fully informed as to its contents.

We are, dear Sirs,

Yours very respectfully,

F. M. GUEDALLA & CO.

N. B. Information to enable the Agreement of 4th May 1934 to be completed will be furnished to you by next mail. [96]

EXHIBIT "F"

STIPULATION OF FACTS

May 22nd, 1934.

F. M. Guedalla & Co.,
Grand Buildings,
Trafalgar Square,
London, W.C.2,
England.

Gentlemen:

We have given careful attention to your letter of May 4th on the subject of Charles Laughton and Motion Picture & Theatrical Industries, Ltd. and assure you that we will cooperate fully with you in all matters pertaining to our client, which would affect his relations with the aforementioned corporation.

We are pleased to have Mr. Loyd Wright act for your corporation and urge you to transmit to him as quickly as possible the necessary Power-of-Attorney, if this has not already been done by the time this letter reaches you.

We are asking Mr. Ralph Blum, our attorney, to get together with Mr. Wright in the next few days in order to draft a contract between your corporation and ours which will supplement the document now in existence between Mr. Laughton and ourselves.

In compliance with your request, we are enclosing herewith a true copy of Mr. Laughton's

contract with our corporation, together with a copy of Mr. Laughton's present contract with Paramount Productions, Inc. In connection with this last document and your request to have it replaced by a contract between Paramount Productions, Inc. and your corporation, it is not practical to ask Paramount to re-draft their contract with Mr. Laughton at this late date, and, furthermore, there would be no real practical advantage to this inasmuch as Mr. Laughton will commence and complete his last picture under that Paramount contract this summer, thereby bringing the contract to an end. If you desire, however, we will request Paramount Productions, Inc. to make Mr. Laughton's checks for this last picture payable to Motion Picture & Theatrical Industries, Ltd.

We are, as requested by you, having the contracts with Metro-Goldwyn-Mayer covering Mr. Laughton's services in "Barretts of Wimpole Street" and "Marie Antoinette" made out in favor of Motion Picture & Theatrical Industries, Ltd.

We have instructed our London office to communicate with you in order to expedite the transmission of your instructions to the Bank of America here to pay over to us commissions on behalf of Mr. Laughton and we trust such instructions will have been given by you before this letter reaches you.

With a feeling that cooperation between your company and ours will be of mutual benefit, we remain

Very sincerely yours,

FRANK JOYCE & MYRON
SELZNICK, LTD.

By

SIG MARCUS, Vice-Pres.

cc Paramount contract enc.

cc managerial " enc.

cc to Messrs. Selznick, Joyce,

Hayward, McCormick [98]

EXHIBIT "G"

STIPULATION OF FACTS

June 8, 1934.

Loeb, Walker & Loeb,

Pacific Mutual Bldg.,

Los Angeles, California.

Attention Mr. George Cohen:

Dear George:

In reference to the proposed contract between M-G-M and Motion Picture and Theatrical Industries, Limited, and Charles Laughton, first, Motion Picture and Theatrical Industries, Limited, is the name of the company that is primarily entitled to the services of Mr. Laughton. It is a company organized under the Companies Act of 1929 of Eng-

land. It has a contract for the exclusive services of Charles Laughton, which contract is dated May 4th, 1934.

Mr. Guedalla has suggested and requested that if you would consent to make the contract between the two companies and then have Mr. Laughton agree to faithfully perform and fulfill the same, he would appreciate it, and I have made this request over the telephone, and simply reiterate it here with the hope that you will agree to do this.

As far as I can see, it makes no difference, for if I understand the income tax law correctly, you would have to withhold certain moneys by reason of the motion picture company which you have designated in the contract as "Industries", being a foreign corporation.

I have the following additional observations and suggestions which I would like to have incorporated in the redraft:

1. It seems to me that the first part of Paragraph Fourth is in conflict with the other provisions of the contract. As I understand it, M-G-M is only entitled to the exclusive services of Mr. Laughton during the respective periods of time which in the contract he undertakes to perform for M-G-M. It therefore seems necessary for me, that this paragraph be re-drafted.

2. Paragraph Fifth, we would like to have the Producer's rights to double, dub the acts, etc., of the Artist's voice, limited to a foreign language, excepting:

(a) When necessary to expeditiously meet censorship requirements; [99]

(b) In connection with hazardous acts which might result in physical injury to the Artist;

(c) In connection with long shots and process shots;

(d) When the Artist is not available; and,

(e) When the Artist is unable to meet certain specific requirements of a role which requires particular knowledge, talent or ability other than that possessed by the Artist.

3. In the same paragraph, the commercial advertising clause must be changed, so that M-G-M cannot use the Artist's voice, likeness, etc., except where the whole cast of a picture in which the Artist appears may be advertised.

4. In reference to Paragraph Eighth, we request that if there be a suspension by reason of strike for more than two weeks on the five-week picture, or four weeks on the Marie Antoinette picture, unless M-G-M makes payment, Industries has the right to cancel. In this same paragraph, the illness clause of one week is satisfactory for the first picture, but Mr. Laughton insists that on the second picture it be a two-week clause. (I might here tell you that I have submitted the contract to Mr. Laughton's agents, Joyce and Selznick, and my comments herein contain their requests as well as my own.)

5. In reference to Paragraph Ninth, we request that there be no requirement of one week's notice before payment be made. In other words, if the contract is suspended for two weeks, the Studio knows that unless they pay him at the end of that period, he may terminate the contract. Obviously, there is no good reason for requiring Laughton's company to send a notice. I would not object to a provision that Industries cannot cancel the contract until a notice is given you, calling attention to the fact of non-payment beyond the two weeks period and subsequent payment after the notice is given, within a reasonable time of all back accumulation.

6. All notices should be given in care of Frank Joyce-Myron Selznick, Ltd., 9460 Wilshire Boulevard, Beverly Hills, California.

7. Article Fourteenth should provide for a drawing-room when available, and a valet.

8. Article Fifteenth is too broad; we have no objection that it be assigned or transferred to any company succeeding to controlling interest of M-G-M, but not otherwise. [100]

9. Industries request that the billing clause is not satisfactory. The contract, as I understand it, is a starring contract. M.-G.-M is to agree to star Laughton, or co-star him, and if he is co-starred his credit is to be the same as that of the person with whom he is co-starred, and in no event less than 75% in size of the type, etc., used in an-

nouncing the name of the picture or of the largest type used in the advertising, publicity and/or on the screen.

If you have other contracts that prevent that, then in the event that the Artist's services are used in a picture in which there appears also some Artist already under contract which prevents the name being as large, any reasonable recommendation of Studio's obligations in that regard, of course cannot be objectionable.

10. In reference to Paragraph Seventeenth, I would like to eliminate the following: "On condition that Industries and the Artist shall fully and completely keep and perform each and every term and condition of this agreement on their part to be kept or performed". If Mr. Laughton appears in the photoplay, I take it he is entitled to compensation.

11. We wish to add after the word "require", sixth line from the top of page 17, the following: "Unless other engagements of the Artist shall prevent, and in no event shall the Artist be required to remain in the vicinity of Los Angeles for a period longer than one week after the completion of his role in the second of the photoplays referred to herein."

12. As I understand it, there is a mix-up on the dates as set forth in Article 18. Laughton is picked up at Paramount on July 30th: Paramount is to have up to September 8th, so I do not see

how the positive agreement can be made that he shall report September 1st. I would say that an outside date should be made, with the proviso that if he is through sooner with Paramount, he will report to M-G-M by September 1st.

I know that your reaction is going to be one of surprise and amazement, that a contract of this kind could get by with so few comments and suggestions, particularly with a DAMN "LAWYER" in the mess; however, from what I understand of Mr. Goldwyn's comments on agencies, undoubtedly the terrible influence of the lawyer is counteracted by the honesty and uprightness of the agents involved; same to you!

Sincerely yours,

LW/AG [101]

EXHIBIT "H"

STIPULATION OF FACTS

This Agreement, made and entered into at Los Angeles, California, this 5th day of July, 1934, by and between Paramount Productions, Inc., a Delaware corporation, hereinafter referred to as the Producer, and Motion Picture and Theatrical Industries, Limited, a Company organized under the Companies' Act of 1929, of England, hereinafter referred to as Industries:

Witnesseth:

First: Industries hereby warrants and represents to the Producer that Industries and Charles Laughton, hereinafter referred to as the Artist, have heretofore entered into an agreement with each other, whereby Industries has become entitled to the services of the Artist for a period of time extending at least the length of time that the Producer will be entitled to the services of the Artist hereunder. The Producer is desirous of obtaining the sole and exclusive services of the Artist as hereinafter provided, and Industries desires and is willing to permit the Producer so to employ the Artist upon the terms hereinafter provided. Industries further agrees and guarantees that the Artist will keep and perform any and all agreements, duties and obligations assumed by Industries hereunder, so far as the full performance thereof necessitates that the Artist do or refrain from doing, any act or thing.

Second: Pursuant to the provisions of the preceding paragraph, the Producer hereby employs of Industries the services of the Artist to act, play, perform and take part in one (1) motion picture photoplay, with the photographing of which sound, including spoken words, songs and music may be synchronously recorded by mechanical and/or electrical means, and in rehearsals, acts, parts and scenes thereof, including the rendition of speaking parts and musical numbers for and as directed by

the Producer at its Studios at Hollywood, California, and at such studios and on such locations as the Producer may from time to time designate, which said motion picture photoplay is to be produced during the period commencing on or about the 5th day of July, 1934, and continuing for at least five (5) consecutive weeks thereafter, but in no event beyond September 15th, 1934.

Third: Industries guarantees that the Artist will and does hereby accept the said employment, and agrees that he shall give his entire time and attention, and devote his best talent and abilities to the services of the Producer in making the said photoplay, when and where the Producer may direct during the term of this agreement.

Fourth: In full consideration for the services to be rendered by the Artist pursuant hereto, the Producer agrees to pay to Industries, and Industries agrees to accept, salary at the rate of Three Thousand [102] (\$3,000.00) Dollars per week, for not less than five (5) weeks, for the services of the Artist in the making of said photoplay, payments of which salary are to be made to Industries on Wednesday following the end of each week for which the Artist shall be entitled to salary pursuant thereto.

Fifth: If the Artist's services shall be required in said photoplay in excess of the number of weeks specified therefor, Industries agrees that the Artist shall continue to render his services for such ad-

ditional consecutive period with respect to such production as the Producer shall require, and the salary agreed to be paid to Industries for the services of the Artist shall be paid to said Industries until the services of the Artist in said production are complete. For any incomplete week after the last full week, Industries shall be entitled to pro rata of said salary on the basis of a six day week. It is understood for the purposes hereof, that the Artist shall not be deemed to be appearing in said production when he shall appear for re-takes therefor.

Sixth: Industries agrees that the Artist shall appear for re-takes and/or re-recording of any part of said motion picture to be made hereunder, when it shall be necessary, in the opinion of the Producer, after the completion of said photoplay, at compensation of one-sixth ($1/6$ th) of the weekly compensation herein provided, for each day the services of the Artist are required in the making of such re-takes and/or re-recording.

Industries agrees that the Artist shall appear at the studio of the Producer for such re-takes and/or re-recording within a reasonable time after notice of the necessity therefor shall have been given to him.

Seventh: Industries hereby grants to the Producer the exclusive right to use the name of the Artist, his photograph and likeness (and any simulation thereof), and to record, reproduce, amplify

and simulate his voice by electrical and/or mechanical means in said motion picture production to be made hereunder, and in advertising, exploiting, and exhibiting the same.

Eighth: Industries agrees that the Artist shall speak the dialogue of any parts or roles in which he may be cast pursuant hereto, at such times and places designated by the Producer in radio broadcasting, either singly or in conjunction with other players employed by the Producer, for the purpose of advertising and exploiting said motion picture production in which the Artist is to appear, provided the other engagements of the Artist so permit, and Industries further grants to the Producer the right to broadcast by radio broadcasting from the records made by the Artist pursuant hereto.

Ninth: The Producer agrees to provide the Artist with first-class transportation whenever the Artist is required to travel in rendering his services for the Producer, and to defray his necessary living expenses when rendering services hereunder on location, except when in or near the cities of Los Angeles, California, or New York, New York.

[103]

Tenth: If the Artist should be unable or should fail to render his services in the said motion picture production continuously after the photographing of the same shall have commenced, or to proceed on the date set by the Producer for such com-

mencement, the Producer may, at its election, terminate this agreement, or, by giving Industries, as well as the Artist, written notice of its intention so to do, extend the pending period hereof for a period equal to the time during which such disability or non-performance shall continue; but in the event such disability or non-performance shall be due to illness, injury, or accident, then the Producer may not terminate this agreement unless such illness, injury or accident shall continue for one (1) week. Such election shall be without prejudice to any right or remedy of the Producer for failure to perform on the part of the Artist. Should the Producer pay Industries salary during any period of incapacity or failure to perform of the Artist, the time of such non-performance shall, nevertheless, be added to any period so interrupted and the salary paid to Industries during such non-performance shall be treated as payment for the Artist's services during the time so added. The payment of salary to Industries during any such period of incapacity or failure to perform on the part of the Artist, shall be wholly optional with the Producer, and shall not constitute a waiver of any right hereunder or any provision hereof.

Eleventh: Should the Producer be prevented from making motion pictures by epidemic, fire, action of the elements, strikes, labor disputes, governmental order, court order, the act of God, or a public enemy, war, riots, civil commotion, or other

causes beyond the control of the Producer, whether of the same or any other nature, then the operation of this agreement may be suspended during such interruption. Upon the resumption of work by the Producer, a period of time equal to the period of such interruption shall be added at the end of the period so interrupted. If such interruption shall continue beyond six (6) weeks, the said Industries shall be free to terminate this agreement, unless the

Twelfth: Any notice required to be given hereunder by the Producer to Industries shall be sufficiently given by mailing the same by registered mail in a post-paid wrapper, or by telegraphic communication, addressed to Industries in care of Frank Joyce-Myron Selznick, Ltd., Industries' and Artists' agents, or by personally delivering the same to said Frank Joyce-Myron Selznick, Ltd. The date of the mailing of notice, or the personal delivery thereof, shall be the date of the giving of such notice.

Any notice required to be given to the Producer by the Artist or by Industries, shall be given by mailing the same by registered mail in a post-paid wrapper, or by telegraphic communication, addressed to the Producer at 5451 Marathon Street, Hollywood, California.

Thirteenth: Industries hereby warrants that the Artist is free to enter into this agreement and render the services pursuant hereto. [104]

Fourteenth: It is mutually understood and agreed that the Artist's services are extraordinary, unique and not replaceable, and that there is no adequate remedy at law for a breach of this agreement by the Artist; and that the Producer, in the event of such breach or threatened or attempted breach, by the Artist, shall be entitled to equitable relief by way of injunction or otherwise.

In witness whereof, the parties hereto have executed these presents the day and year first above written.

PARAMOUNT PRODUCTIONS,
INC., a corporation,

By (signed) HENRY HERZBRUN

Producer.

MOTION PICTURE AND THE-
ATRICAL INDUSTRIES,
LIMITED,

By (signed) LOYD WRIGHT,

Its Atty in fact.

Industries. [105]

For valuable consideration, the receipt of which I hereby acknowledge, and as an inducement to Paramount Productions, Inc., to enter into the foregoing contract with Motion Picture and Theatrical Industries, Limited, I hereby acknowledge that I have read the foregoing contract; that I understand each and every provision thereof, and personally consent to the same, and do hereby agree

to perform each, every and all acts on my part to be performed and/or guaranteed that I shall perform by said Motion Picture and Theatrical Industries, Limited.

Dated: July 5th, 1934.

(signed) CHARLES LAUGHTON. [106]

EXHIBIT "I"

STIPULATION OF FACTS

This Agreement made and entered into this 6th day of July, 1934, by and between Metro-Goldwyn-Mayer Corporation, a New York corporation, hereinafter referred to as the "producer", and Motion Picture and Theatrical Industries, Limited, a company organized under the Companies Act of 1929 of England, hereinafter referred to as "Industries".

Witnesseth

For and in consideration of the covenants, conditions, warranties, representations and agreements hereinafter contained and set forth, the parties hereto have agreed and do hereby agree as follows:

1. Industries hereby warrants and represents to the producer that Industries and Charles Laughton, hereinafter referred to as the "artist", have heretofore entered into an agreement with each other whereby Industries has become entitled to the services of the artist for a period extending

for at least the length of time that the producer will be entitled to the services of the artist hereunder. The producer is desirous of obtaining the sole and exclusive services of the artist as hereinafter provided, and Industries desires and is willing to permit the producer so to employ the artist upon the terms hereinafter provided. Industries represents and warrants to the producer that the artist expects to benefit by the execution and carrying out of this agreement by the parties hereto and as an inducement to the producer to enter into this agreement Industries agrees and guarantees that the artist will fully and faithfully keep and perform each and all of the services, obligations and agreements which are to be kept and performed by the artist under the terms of this agreement, as fully as though this agreement were made solely between the producer and the artist and as though the compensation payable by the producer hereunder were to be paid directly to the artist. Industries further agrees and guarantees that the artist will keep and perform any and all agreements, duties and obligations assumed by Industries hereunder so far as the full performance thereof necessitates that the artist do or refrain from doing any act or thing; and Industries agrees that it will keep and perform any agreements, duties or obligations assumed or which Industries agrees will be performed by the artist hereunder, so far as the full performance thereof necessitates that Indus-

tries do or refrain from doing any act or thing.

2. Pursuant to the provisions of the preceding paragraph the producer hereby employs and engages the artist to render his services as an actor solely and exclusively for the producer in connection with two (2) photoplays to be produced by the producer as hereinafter more specifically provided, and Industries hereby agrees to furnish the services of the artist to the producer hereunder and agrees that the artist will fully and completely keep and perform each and all of the agreements, duties and obligations for the performance of which the services of the artist are to be furnished to the producer, as in this agreement provided. The term "photoplays", as used in this [107] agreement, shall be deemed to include, but not be limited to, motion picture productions, produced and/or exhibited with sound and voice recording, reproducing, and/or transmitting devices, radio devices, and all other improvements and devices which are now or may hereafter be used in connection with the production and/or exhibition and/or transmission of any present or future kind of motion picture productions.

3. Industries agrees that the artist will act, pose and appear solely and exclusively for and as requested by the producer hereunder; that he will promptly and faithfully comply with all reasonable instructions, requests, rules and regulations made by the producer in connection herewith; and that

he will perform and render his services hereunder conscientiously and to the full limit of his ability and as instructed by the producer, at such times and places as the producer may designate.

4. Industries agrees that at all times during which, under the terms of this agreement, the services of the artist are to be rendered for the producer, such services shall be rendered solely and exclusively for the producer, and that the artist will not during any such times render his services as an actor, or pose, act, appear, write, direct or render any other services in any way connected with motion pictures or photoplays, nor will he render any services of any kind or character whatsoever in any way connected with dramatic, theatrical, musical, vaudeville, radio, television or other productions, shows, performances and/or entertainment, nor will he render any similar services to or for himself or for Industries or to or for any person, firm or corporation other than the producer, without the written consent of the producer first had and obtained. Industries further agrees that it will not consent to nor authorize nor permit any other person to advertise, announce or make known, directly or indirectly, by paid advertisements, press notices or otherwise, that the artist has contracted to do or perform any act or services contrary to the terms of this agreement. The producer shall have the right to institute any legal proceedings, in the

name of the artist or otherwise, to prevent such acts, or any of them.

5. Industries expressly gives and grants to the producer the sole and exclusive right to photograph and/or otherwise reproduce any and all of the artist's acts, poses, plays and appearances of any and all kinds in connection with the photoplays in which the artist is to appear hereunder, and to record his voice and all instrumental, musical and other sound effects produced by him, and to reproduce and/or transmit the same, either separately or in conjunction with such acts, poses, plays and appearances as the producer may desire; and further gives and grants to the producer solely and exclusively all rights of every kind and character whatsoever in and to the same, or any of them, perpetually, including as well the perpetual right to use the name of the artist and pictures or other reproductions of the artist's physical likeness, and recordations and reproductions of the artist's voice in connection with the advertising and exploitation thereof. The producer shall have the right to "double" or "dub" the acts, poses, plays and appearances of the artist and, as well, the voice of the artist and all instrumental, musical and/or other sound effects to be produced by the artist to such extent as may be desired by the producer, such doubling or dubbing as to the [108] artist's voice, however, to be only in a foreign language or in such foreign languages as may be designated or desired

by the producer, except that the same may be in the English language in the following events:

(a) When necessary to expeditiously meet censorship requirements;

(b) In connection with hazardous acts which might result in physical injury to the Artist;

(c) In connection with "Long shots" and "process shots";

(d) In the event of failure, refusal or neglect on the part of the artist to comply with his obligations or when the artist is not available; and

(e) When the artist is unable to meet certain special requirements of a role which requires particular knowledge, talent or ability other than that possessed by the artist.

Industries also hereby grants to the producer the sole and exclusive right to make use of and distribute the name of the artist and pictures, photographs and other reproductions of the artist's physical likeness and recordations and reproductions of the artist's voice for advertising, commercial and/or publicity purposes in connection with advertising, publicity and/or exploitation in which the title of the photoplay or photoplays in which the artist renders services hereunder also appears. Industries agrees that neither it nor the artist will at any time during said term grant the right to, authorize or willingly permit any person, firm or corporation,

other than the producer, to make use of the name of the artist or to make use of or distribute his pictures, photographs or other reproductions of his physical likeness, excepting only as hereinafter more specifically provided, and the producer is authorized, in the name of the artist or otherwise, to institute any proper legal proceedings to prevent such acts or any of them.

6. [Cancelled.) L.W. E.M.

7. In the event that the producer desires at any time or from time to time to apply, in its own name or otherwise, but at its own expense, for life, health, accident, or other insurance covering the artist, Industries agrees that the producer may do so and may take out such insurance for any sum which the producer may deem necessary to protect its interests hereunder. The artist shall have no right, title or [109] interest in or to such insurance, but Industries agrees that the artist nevertheless will assist the producer in procuring the same by submitting to the usual and customary medical and other examinations and by signing such applications and other instruments in writing as may reasonably be required by such insurance company or companies. Any and all policies of life, health or other insurance covering the artist obtained by the producer hereunder may be taken over and assumed by the artist upon the completion of all services to be performed by the artist in connection with both of the photoplays in which the artist is

to appear hereunder, provided that Industries or the artist makes all necessary arrangements with and obtains all necessary consents of the insurance company or companies writing such insurance, upon payment to the producer of the cash surrender value, if any, of the policy or policies desired to be taken over or assumed by the artist.

8. The respective periods hereinafter in paragraph 17 provided for, of five (5) weeks with respect to the first photoplay in which the artist is to appear hereunder and of twelve (12) weeks with respect to the second photoplay in which the artist is to appear hereunder will hereinafter for convenience, as to such respective photoplays, be hereinafter referred to as the "specified period". For the purpose of this agreement a photoplay shall be deemed to be "in production" from the date on which the artist is scheduled by the producer to report to the producer in connection with such photoplay until the production of such photoplay is completed or until the date of any cancellation of such photoplay; it being expressly understood that the prevention or postponement of the commencement of the artist's services in any photoplay by reason of the happening of any of the contingencies specified in paragraphs 8, 9 or 10 hereof shall have the same effect as though such contingencies had occurred during the actual rendition of the artist's services in connection with such photoplay. If while any photoplay is in production the artist shall be incapacitated by reason of mental or phys-

ical disability or otherwise from fully performing the terms or complying with each and all of his obligations hereunder or if he suffer any facial or physical disfigurement materially detracting from his appearance on the screen or interfering with his ability to perform properly his required services hereunder or if his present facial or physical appearance be materially altered or changed or if he suffer any impairment of his voice materially affecting his ability to perform properly hereunder (such disability and/or incapacity and/or facial and/or physical disfigurement and/or change of appearance and/or impairment of voice being sometimes hereinafter for convenience referred to as "illness"), then and in either or any of said events the obligations of the producer under this agreement shall be suspended during the period of such illness, and the period of such suspension shall not be included in computing the "specified period" applicable to the photoplay in respect of which such suspension shall have occurred. During the period of such suspension no payments whatsoever shall be made to Industries by the producer. In the event of the continuance of such illness for a period or aggregate of periods in excess of one (1) week while the first photoplay in which the artist is to appear hereunder is in production or for a period or aggregate of periods in [110] excess of two (2) weeks while the second photoplay in which the artist is to appear hereunder is in production, the producer

shall have the right, at its option, to terminate the employment of the artist with respect to the photoplay in respect of which such illness shall have occurred. In the event of such termination with reference to such photoplay the producer may nevertheless complete such photoplay with another person in the role which was being or was to have been portrayed by the artist therein, and the completion of such photoplay with such other person shall not affect the producer's right of termination with respect to such photoplay. The number of photoplays in which the producer is obligated to furnish employment to the artist hereunder and with respect to which Industries is entitled to compensation hereunder shall be reduced by the number of photoplays in connection with which the producer may exercise its right of termination. It is agreed that if either Industries or the artist allege that the artist is incapacitated by illness or other disability or incapacity from the full and faithful performance of this agreement the producer shall have the right, at its option, to have medical examinations of the artist made by such physician or physicians as the producer may designate.

9. If during the employment of the artist hereunder the production activities of the producer be materially hampered, interrupted or interfered with by reason of fire, casualty, strike, labor conditions, lockouts, unavoidable accident, war, act of God, or

by the enactment of any municipal, state or federal ordinance or law, or by the issuance of any executive or judicial order, whether municipal, state or federal, or by any other legally constituted authority, or by any other cause of the same or any similar kind or character, or if for any reason whatsoever the majority of the motion picture theatres in the United States shall be closed for a week or any period in excess of a week, the obligations of each of the parties hereto under this agreement shall be suspended likewise, at the option of the producer during the continuance of such event or events, and the period or periods of the continuance of such event or events shall not be included in computing the "specified period" applicable to the photoplay in connection with which the artist was rendering or was to have rendered his services at the time of the occurrence of such event or events. If the event of the continuance of such event or events for a period or aggregate of periods in excess of two (2) weeks while the first photoplay in which the artist is to appear hereunder is in production, or for a period or aggregate of periods in excess of four (4) weeks while the second photoplay in which the artist is to appear hereunder is in production, then and in either of said events either the artist and Industries or the producer, at their or its option, may elect to terminate the artist's employment in respect of such photoplay; provided, however, that should the artist and Industries desire to elect, to

terminate the artist's employment in connection with such photoplay they shall serve notice of such desire upon the producer, and if the producer should not resume the payment of such installment or installments, if any, as would be payable to Industries hereunder in the absence of the happening of such event or events, commencing as of not later than two (2) days after the receipt of such notice from the artist and Industries, then and in that event the employment of the artist hereunder in connection [111] with such photoplay shall be terminated. If the producer should resume the payment of such installments, commencing as of not later than two (2) days after the receipt of such notice, then and in that event the employment of the artist hereunder shall not be terminated, but shall continue in full force and effect. In the event of the termination of the employment of the artist in respect of any photoplay pursuant to the preceding provisions of this paragraph, the producer shall be released from the obligation to pay any installment or installments of compensation to Industries in connection with the photoplay as to which such termination is effective, accruing after the date of such termination.

10. It is distinctly understood and agreed by and between the parties hereto that the services to be rendered by the artist under the terms hereof, and the rights and privileges granted to the producer by Industries under the terms hereof, are of

a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breach by the artist and/or by Industries of any of the provisions contained in this agreement will cause the producer irreparable injury and damage. Industries hereby expressly agrees that the producer shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by the artist and/or by Industries. This provision, however, shall not be construed as a waiver of any other rights that the producer may have in the premises, for damages or otherwise. Any failure on the part of Industries to perform and/or comply with its obligations hereunder or any failure, refusal or neglect on the part of the artist to perform any of the obligations and/or agreements which Industries agrees will be performed by the artist, hereunder, will hereinafter for convenience be referred to as a "breach". In addition to all other rights and remedies which the producer may have, the producer, at its option, in the event of any breach, shall have the right to refuse to pay Industries any compensation during the continuance of such breach. The producer shall have the further right at any time during the continuance of such breach, to terminate this agreement, or, if it so desires, the producer may terminate the employment of the artist only as to the photoplay with respect to which such breach shall

have occurred, in which latter case the total number of photoplays in connection with which the producer is obligated hereunder to employ the artist, shall be reduced accordingly. The producer shall have the further right, at its option, at any time during the continuance of such breach, to complete the photoplay with respect to which such breach shall have occurred with another person in the role which was being or which was to have been portrayed by the artist therein, and in such case this agreement shall be suspended both as to services and as to the payment of any installment or installments of compensation to Industries during the period reasonably required for such other person to complete such photoplay, and the total number of photoplays in connection with which the producer is obligated hereunder to employ the artist shall be reduced accordingly. If because of any breach the employment of the artist shall have been terminated with respect to the photoplay in connection with which such breach shall have occurred, or if another person shall have been substituted to complete the artist's role in such photoplay, as herein provided, [112] all installments of compensation paid by the producer to Industries with respect to such photoplay prior to such termination or substitution shall, in the event such breach should occur while the first photoplay in which the producer is obligated hereunder to employ the artist, is in production, be applied against the compensation payable to Industries with respect

to the second photoplay in connection with which *which* the producer is obligated hereunder to employ the artist; provided, however, that if any such termination or substitution shall have occurred in connection with said second photoplay, or if because of any such breach occurring in connection with the first photoplay the producer shall have terminated this agreement in its entirety, all installments of compensation paid by the producer to Industries with respect to such photoplay prior to such termination or substitution shall be repaid by Industries to the producer on demand. Each and all of the several rights, remedies and options of the producer contained in this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or priority allowed by law.

11. No waiver by the producer of any breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or provision.

12. All notices which the producer is required or may desire to give the artist or Industries or both may be given by addressing the same either to Industries or the artist, or both, in care of Frank Joyce-Myron Selznick, Ltd., 9460 Wilshire Blvd., Beverly Hills, California, or by addressing the same to such other address as may be designated from time to time in writing by Industries or the artist, and in either case by depositing the same so ad-

addressed postage prepaid in the United States mail at Culver City or Los Angeles, California; or by delivering the same so addressed to any telegraph or cable company, or, at its option, the producer may deliver such notice as it is required or may desire to give the artist or Industries to the artist personally or to any officer of Industries either in writing, or unless otherwise specified herein, orally. If the producer elect to mail such notice or to send the same by telegraph or cable then the date of mailing thereof or the date of delivery to the telegraph or cable office, whichever method may be selected by the producer shall be the date of the service of such notice. Notice given either to the artist or to Industries as aforesaid shall for all purposes be and be deemed to be notice to both the artist and to Industries.

13. The artist shall provide, at his own expense, such modern wardrobe and wearing apparel as may be necessary for any and all roles to be portrayed by the artist hereunder; it being agreed, however, that should so-called character or period costumes be required, the producer shall supply the same. The costumes, apparel and other articles furnished or paid for by the producer, pursuant to the terms of this agreement or otherwise, shall be and remain the property of the producer, and shall be returned promptly to it.

14. Should the artist be required to perform any services hereunder in any place other than the city of Los Angeles, California, [113] or its environs,

the producer shall pay for and/or furnish the necessary and reasonable food, lodging and transportation (including drawing room, when available) reasonably required for the artist and the artist's valet on account of the rendition of such services.

15. In the event of the merger or consolidation of the producer with any other corporation or corporations, or in the event of the sale or transfer by the producer of a major portion of its assets, or of its business or goodwill, then and in either or any of said events the producer shall have the right to assign and/or transfer its rights hereunder in whole or in part to such successor in interest of the producer, and in the event of such assignment or transfer the artist shall continue to perform his duties and obligations according to the terms and tenor hereof, to or for such assignee and/or transferee.

16. On condition that the artist and Industries shall fully and completely keep, perform and observe each and every term, covenant and condition of this agreement on their parts to be kept, performed or observed, the producer agrees to give the name of the artist credit as star or co-star on the screen and in advertising and paid publicity issued by the producer in connection with each photoplay in which the services of the artist are completed hereunder. Such credit shall be given in type at least seventy-five per cent (75%) as large as that in which the name of the person or persons co-starred with the artist is displayed; it being agreed, however, as to each photoplay in which the artist's

services are completed hereunder, exhibited in any country or countries of Europe, the name of the artist shall, in such country or countries, be given credit on the screen and in advertising and paid publicity issued by the producer in type as large as that used to display the name of the person or persons co-starred with the artist in such photoplay. Nothing herein contained shall be construed so as to prevent so-called "teaser" and/or special advertising, publicity and/or exploitation relating to the story upon which each respective photoplay is based, any of the members of the cast, the director, the author, or similar matters, without mentioning the name of the artist, or so as to prevent so-called "trailer" or other advertising on the screen without mentioning the name of the artist, and no casual or inadvertent failure to comply with the provisions of this paragraph shall constitute a breach of this agreement.

17. The producer agrees to pay Industries for all rights herein granted and/or agreed to be granted to the producer and for the full and complete performance by the artist of each and all of the obligations and agreements which Industries agrees will be performed by the artist, the sum of Forty Thousand Dollars (\$40,000.00) for the first photoplay in which the artist appears hereunder, and the sum of Fifty Thousand Dollars (\$50,000.00) for the second photoplay in which the artist appears hereunder. Said compensation shall entitle the producer to the exclusive services of the artist in con-

nection with the first photoplay for a period of five (5) weeks from and after the date of commencement of the services of the artist therein, and in connection with the second photoplay for a period of twelve (12) weeks from and after the date of commencement of the services of the artist in connection with said second photoplay, exclusive of the period or periods of the continuance of any of the contingencies referred to in paragraphs 8, 9 and 10 hereof. [114] Said period of five (5) weeks as applied to the first photoplay and said period of twelve (12) weeks as applied to the second photoplay, is the period herein referred to as the "specified period". Said compensation shall be payable in installments at a weekly rate equivalent to Eight Thousand Dollars (\$8,000.00) per week in respect of the first photoplay and at a weekly rate equivalent to Forty-one Hundred Sixty-six and 66/100 Dollars (\$4,166.66) per week in respect of the second photoplay (except that for the last weekly installment of said "specified period" the rate shall be Forty-one Hundred Sixty-six and 74/100 Dollars (\$4,166.74). Said compensation as to each photoplay shall be payable on Saturday for services rendered by the artist in connection with such photoplay up to and including the Wednesday preceding. In computing the amount of the installment of compensation payable to Industries in respect of any week during which the services of the artist shall have been rendered for less than the full week the

weekly rate shall be prorated and for this purpose the daily rate shall be one-sixth of the weekly rate. Should the portrayal of the artist's role in either photoplay be completed prior to the payment to Industries of the full compensation payable by the producer for the entire "specified period" the entire unpaid balance of such compensation shall be payable to Industries upon the completion of such role. Should the artist's services in the portrayal of his role in either photoplay be required by the producer after the "specified period" applicable to such photoplay, compensation for such time thereafter as the artist's services are required by and actually rendered for the producer shall be payable to Industries in respect of the first photoplay at the rate of Eight Thousand Dollars (\$8,000.00) per week and in respect of the second photoplay at the rate of Forty-one Hundred Sixty-six and 66/100 Dollars (\$4,166.66) per week. If after the completion of the artist's role in either photoplay the producer should desire the additional services of the artist in the making of retakes, added scenes and/or changes in connection with such photoplay, Industries agrees that the artist will render such services for the producer at such time or times as the producer may require, unless other engagements of the artist shall prevent, but Industries agrees that if otherwise engaged, Industries and the artist will cooperate with the producer to the fullest extent in the making of such retakes, added scenes and/or

changes. Industries further agrees that after the completion of the artist's role in the second of the two (2) photoplays in which the artist is to appear hereunder, the artist will remain in and about the vicinity of Los Angeles for a period of not more than two (2) weeks for the purpose of rendering such services as may be required by the producer in the making of retakes, added scenes and/or changes. Compensation for such additional services rendered in respect of either photoplay after the expiration of the "specified period" shall be payable at the same weekly rate as is payable to Industries hereunder in connection with such photoplay for the artist's services after the expiration of the "specified period", which compensation, however, shall be payable only for the days on which the artist's services are actually required by and rendered for the producer in the making of such retakes, added scenes and/or changes. In computing all weekly compensation payable to Industries hereunder for services rendered by the artist for less than a full week the weekly rate shall be prorated and for this purpose the daily rate shall be one-sixth of the weekly rate. All compensation hereunder shall be payable to [115] Industries, and the producer shall not be obligated to make any payments of any kind directly to the artist, and Industries hereby agrees to indemnify and hold the producer harmless of and from any and all claims of the artist for the payment directly to the artist of any compensation herein provided for.

18. The first photoplay in which the artist is to appear hereunder shall be the photoplay now entitled "The Barretts of Wimpole Street" in which photoplay the artist shall portray the role of Elizabeth Barrett's father. In the second photoplay in which the artist is to appear hereunder the artist shall portray the role of "Louis XVI" in the producer's photoplay now entitled "Marie Antoinette". The term of the artist's employment in connection with said first photoplay shall be deemed to have commenced on May 14, 1934 and shall continue thereafter for such time as the producer may require the services of the artist in the portrayal of said role. After the completion of the artist's services in the portrayal of said role the artist may appear in one photoplay for Paramount Productions, Inc. (hereinafter referred to as "Paramount") subject to and upon the express condition that the artist's services for Paramount shall not continue after September 7th, 1934 unless Paramount shall have obtained from the producer a written extension of the time during which the artist's services for Paramount may be rendered. The term of the artist's employment in connection with the second photoplay in which the artist is to appear for the producer hereunder shall commence on September 8, 1934; provided, however, that if the artist's services for Paramount are completed before September 7, 1934 and the producer is then ready to use the artist's services in connection with

said second photoplay, the term of the artist's employment in connection with said second photoplay shall, at the option of the producer, commence either on the day next following the completion of the artist's services for Paramount or on any subsequent date not later than September 8, 1934 which the producer may designate; provided further, that if the artist's services for Paramount are completed on or before September 7, 1934 but the producer at the time of such completion is not ready to use the services of the artist in connection with said second photoplay, the term of the artist's employment in connection with said second photoplay shall commence on a date to be designated by the producer, which date shall not be later than September 8th, 1934; provided, further, that if Paramount uses the artist's services after September 7, 1934 (which it may do only with the written consent of the producer, as aforesaid), then the term of the artist's employment in connection with said second photoplay shall commence on the day next following the completion of the artist's services for Paramount.

19. Industries and the artist acknowledge that prior to the execution hereof various correspondence, cables and other communications relative to the employment of the artist hereunder have passed between the parties hereto. It is expressly understood that this present agreement contains and embodies the entire and complete understanding and agree-

ment between the parties hereto, and any and all understandings and/or agreements of any and every kind between the parties hereto, relating to the employment of the artist in connection with the photoplays herein referred to, are hereby cancelled and terminated, and [116] Industries hereby releases the producer of and from all claims and demands of any and every kind whatsoever arising out of or based upon any and all such previous understandings and/or agreements. Without in any way limiting the generality of the foregoing, Industries hereby acknowledges that the producer has already furnished necessary transportation from London, England to Los Angeles, California, and Industries further acknowledges that all obligations of the producer with reference to furnishing any transportation other than the transportation to which the artist may hereafter become entitled pursuant to the provisions of paragraph 14 hereof have been fully complied with.

20. Industries hereby guarantees the full and faithful performance by the artist of each and all of the covenants and agreements which Industries under the terms hereof agrees will be performed by the artist. It is expressly understood that Industries shall not have the right to transfer or assign all or any of its rights or obligations hereunder, without the written consent of the producer first had and obtained.

21. Industries hereby represents and warrants to the producer that neither Industries nor the artist is under any contractual obligations of any kind to any person, firm or corporation which will or might prevent, conflict or interfere with the full and complete performance by Industries of each and all of its obligations and agreements hereunder and/or by the artist of any of the obligations and/or agreements which Industries agrees will be performed by the artist hereunder or which will or might prevent, conflict or interfere with the exercise and enjoyment by the producer to the fullest extent of each and all of the rights herein granted to the producer.

In witness whereof, the parties hereto have executed this agreement the day and year first above written.

METRO-GOLDWYN-MAYER CORPORATION

By E. J. MANNIX (Signed)

Vice President

MOTION PICTURE AND THEATRICAL INDUSTRIES, LIMITED.

By LOYD WRIGHT (Signed)

Its Atty-in-Fact. [117]

As an inducement to Metro-Goldwyn-Mayer Corporation (hereinafter referred to as "Metro") to execute the foregoing agreement between Metro and Motion Picture and Theatrical Industries;

Limited (hereinafter referred to as "Industries") and as a material part of the consideration moving Metro to enter into said agreement, the undersigned hereby consents to the execution of said agreement by Industries and agrees to be bound thereby. Specifically, but without in any way limiting the generality of the foregoing, the undersigned expressly agrees that he will fully and faithfully keep and perform each and all of the services, obligations and agreements which, under the terms of said agreement, Industries agrees and guarantees will be kept and performed by the undersigned, as fully and to the same extent as though said agreement were made solely between Metro and the Undersigned and as though the compensation payable by Metro under said agreement were to be paid directly to the undersigned, and the undersigned agrees that he will keep and perform any and all agreements, duties and obligations assumed by Industries under said contract so far as the full performance thereof necessitates that the undersigned do or refrain from doing any act or thing. The undersigned hereby expressly authorizes Metro to pay all compensation accruing under the foregoing agreement, directly to Industries, and hereby releases and discharges Metro of and from any and all claims and demands of every kind which the undersigned may have for the payment to the undersigned of any compensation accruing under said agreement or for any services rendered by the

undersigned in connection with the photoplays referred to therein. The undersigned further hereby joins in and reaffirms as his own and for his own behalf each and all of the representations and warranties made by Industries under the terms of the foregoing agreement, and further hereby guarantees to Metro the full and faithful performance by Industries of each and all of its obligations and agreements under the terms of said agreement. The undersigned acknowledges that prior to the execution hereof various correspondence, cables and other communications relative to the employment of the undersigned by Metro have passed between the undersigned and/or Industries and Metro. The undersigned further acknowledges that the foregoing agreement embodies the entire and complete understanding relative to the employment of the undersigned in connection with the photoplays referred to therein, and hereby joins in the provisions of paragraph 19 of the foregoing agreement and acknowledges that there are no existing contracts, agreements or understandings of any kind, either oral or written, between the undersigned and Metro relating to the employment of the undersigned by Metro, and the undersigned releases and discharges Metro of all claims and demands of any and every kind whatsoever arising out of or based upon any or all previous contracts, agreements and/or understandings of every kind between the undersigned and Metro. Without in any way limiting

the generality of the foregoing, the undersigned acknowledges that Metro has already furnished the undersigned with necessary transportation from London, England to Los Angeles, California, and further acknowledges that all obligations of Metro with reference to the furnishing of any transportation other than such transportation as Metro is to furnish under the provisions of paragraph 14 of the foregoing agreement, have been fully complied with.

Dated July 5th, 1934.

(Signed) CHARLES LAUGHTON [118]

EXHIBIT "J"

STIPULATION OF FACTS

Metro-Goldwyn-Mayer Corporation
Studios
Culver City
California

August 25, 1934.

Motion Picture and Theatrical Industries, Ltd.
c/o Metro-Goldwyn-Mayer Corporation
Culver City, California

Gentlemen:

This will confirm the following agreement between us:

1. For convenience you are hereinafter sometimes referred to as "Industries", the undersigned, Metro-Goldwyn-Mayer Corporation, is sometimes referred to as "the Producer", and Charles Laughton is sometimes referred to as "the Artist".

2. Paragraph 1 of an agreement executed between you and ourselves under date of July 6, 1934 (said agreement being hereinafter sometimes designated "the prior agreement") is hereby incorporated herein and made a part hereof as though fully set out herein.

3. Paragraph 2 of the prior agreement is also incorporated herein and made a part hereof, except that the reference in said Paragraph 2 incorporated herein to "two photoplays" is hereby stricken therefrom and in lieu thereof is hereby substituted and inserted the words and figures "one photoplay". And a similar deletion and substitution shall be deemed to be made with respect to any and all other paragraphs of the prior agreement hereinafter incorporated herein by reference.

4. Paragraphs 3, 4, 5, and 7 of the prior agreement are also incorporated herein as aforesaid, excepting that any references in said paragraphs so incorporated to photoplays in the plural number shall be deemed and construed to be references in the singular number to the photoplay to be produced hereunder.

5. The term of this agreement shall be for such period as may be necessary to permit the Artist to complete the rendition of all services which may

be necessary to complete the portrayal of the role of "Micawber" in the photoplay "David Copperfield", subject however to the [119] provisions hereinafter contained with respect to the compensation to be paid you for said services. The said term shall commence on the day next following the completion of the rendition of the artist's services in the portrayal of a role which he is now rendering in a photoplay now being produced by Paramount Productions, Inc., which commencement date will be on or about October 1, 1934 and shall continue thereafter for such period of time as may be necessary to permit the artist to complete the portrayal of said role in "David Copperfield", but shall not continue after the completion of the rendition of all of the artist's services to be rendered to us in portraying a role in the photoplay now known as "Marie Antoinette" pursuant to a contract between you and ourselves dated July 6, 1934. It is understood and agreed that we shall have the right during the first four (4) weeks of said term to use the services of the artist in the enactment of the said role in "David Copperfield" and that thereafter as far as possible we shall endeavor to make the term of this agreement concurrent with the term of said agreement of July 6, 1934; provided, however, that the artist, without his consent shall not on any one day be required to render his services as an actor in both the enactment of said role in "Marie

Antoinette" and the enactment of said role in "David Copperfield"; and provided further that no day or days upon which the artist renders his services in the enactment of said role in "David Copperfield" shall be reckoned or counted as a part of the allotted term or period for the rendition of the artist's services in portraying the said role in "Marie Antoinette".

6. On condition that you and the Artist fully and completely observe and perform every provision herein contained to be performed by you and the Artist, or either, we agree to pay to you as compensation for all services and rights herein granted or agreed to be granted us herein the sum of Fifty-five Thousand Dollars (\$55,000.00) in thirteen (13) equal weekly installments, payable on Saturday of each week after the commencement of the term, for services rendered up to and including the preceding Wednesday.

7. Paragraphs 8 to 15, both inclusive, of the prior agreement are hereby incorporated herein and made a part hereof as aforesaid, excepting only that the provisions of Paragraphs 8 and 9 of the prior agreement with respect to the second photoplay therein mentioned (rather than such provisions which relate to the first photoplay therein mentioned) shall govern and be deemed applicable to the Artist's services hereunder and to the photoplay to be produced hereunder.

8. On condition that the Artist completes the portrayal of the role hereunder, we agree to star

the name of the Artist on the screen and in advertising and paid publicity issued by us in connection with said photoplay. The Artist's credit on the screen shall be in substantially [120] the following form:

CHARLES LAUGHTON

as

MICAWBER

in

DAVID COPPERFIELD

The name of the Artist displayed on the screen as aforesaid shall be in type at least Fifty (50) percent as large as the type displaying the title of said photoplay, and the name of the Artist shall be in type not less than twice as large as that used to display the name of any other member, of said cast. The last sentence (commencing with the words "nothing herein contained") of Paragraph 16 of the prior agreement, is hereby incorporated herein and made a part hereof.

9. It is understood that the Artist is under certain commitments with respect to his services to London Film Productions, Ltd., and, notwithstanding anything to the contrary hereinabove contained, this entire contract shall be null and void and none of the obligations created hereby shall be enforceable or have any effect whatsoever until and unless we or you and/or the Artist secure the consent and approval of said London Film Productions, Ltd. so that the services of the Artist

may be rendered to us as provided in this contract.

If the foregoing correctly states our agreement will you kindly indicate that fact by signing your name in the space hereinbelow provided for that purpose.

Very truly yours,

METRO-GOLDWYN-MAYER
CORPORATION

By (signed) E. J. MANNIX
Vice-President

Approved and Accepted 8-25-34

MOTION PICTURE AND THEATRICAL
INDUSTRIES, LTD.

By (signed) LOYD WRIGHT
Its Atty.-in-Fact

As an inducement to Metro-Goldwyn-Mayer Corporation to enter into the foregoing agreement I hereby agree that each and all of the agreements, terms, conditions and provisions of an agreement signed by me on July 5, 1934 and attached to the said prior agreement, shall be deemed fully applicable to the foregoing agreement in the same manner and to the same extent as though my said agreement of July 5, 1934, were herein fully set forth and executed by me.

(signed) CHARLES LAUGHTON [121]

Metro-Goldwyn-Mayer Corporation
Studios
Culver City
California

August 25, 1934.

Motion Picture and Theatrical Industries, Ltd.,
c/o Metro-Goldwyn-Mayer Corporation,
Culver City, California.

Gentlemen:

Attention—Mr. Loyd Wright.

Supplementing our agreement, executed concurrently herewith, for the services of Charles Laughton in our photoplay "David Copperfield", it is understood and agreed that paragraphs 5 and 6 of said contract shall be amended as follows:

5. The last sentence of paragraph 5 of said contract shall end with the words "David Copperfield" appearing in the fifth line from the end of the paragraph and the remainder of the sentence is hereby stricken therefrom.

6. The following is hereby inserted as the last sentence of paragraph 6 of said contract:

"It is agreed that if all services herein agreed to be performed by the artist have been completed prior to the full payment to you of said sum of Fifty-five Thousand Dollars (\$55,000.00) the entire unpaid balance thereof shall be due and payable to you upon such completion."

If the foregoing is in accordance with your understanding of our agreement, kindly indicate your approval and acceptance thereof in the space hereinbelow provided.

Yours very truly,

METRO-GOLDWYN-MAYER
CORPORATION

By (signed) E. J. MANNIX
Vice-President.

Approved and Accepted:
MOTION PICT. & THEATRICAL INDUS-
TRIES, LTD.

By (signed) LOYD WRIGHT
Its Atty. in fact.

(signed) CHARLES LAUGHTON [122]

EXHIBIT "K"

STIPULATION OF FACTS

This agreement made and entered into this 25th day of August, 1934, by and between Metro-Goldwyn-Mayer Corporation, a New York corporation, hereinafter referred to as the "producer", and Motion Picture and Theatrical Industries, Limited, a company organized under the Companies Act of 1929 of England, hereinafter referred to as "Industries",

Witnesseth:

For and in consideration of the covenants, conditions, warranties, representations and agreements

hereinafter contained and set forth, the parties hereto have agreed and do hereby agree as follows:

1. Industries hereby warrants and represents to the producer that Industries and Charles Laugh-ton, hereinafter referred to as the "artist", have heretofore entered into an agreement with each other whereby Industries has become entitled to the services of the artist for a period extending for at least the length of time that the producer will be entitled to the services of the artist hereunder. The producer is desirous of obtaining the sole and exclusive services of the artist as herein-after provided, and Industries desires and is willing to permit the producer so to employ the artist upon the terms hereinafter provided. Industries represents and warrants to the producer that the artist expects to benefit by the execution and carrying out of this agreement by the parties hereto and as an inducement to the producer to enter into this agreement Industries agrees and guarantees that the artist will fully and faithfully keep and perform each and all of the services, obligations and agreements which are to be kept and performed by the artist under the terms of this agreement, as fully as though this agreement were made solely between the producer and the artist and as though the compensation payable by the producer hereunder were to be paid directly to the artist. Industries further agrees and guarantees that the artist will keep and perform any and all agree-

ments, duties and obligations assumed by Industries hereunder so far as the full performance thereof necessitates that the artist do or refrain from doing any act or thing; and Industries agrees that it will keep and perform any agreements, duties or obligations assumed or which the Industries agrees will be performed by the artist hereunder, so far as the full performance thereof necessitates that Industries do or refrain from doing any act or thing.

2. Pursuant to the provisions of the preceding paragraph the producer hereby employs and engages the artist to render his services as an actor solely and exclusively for the producer in connection with two (2) photoplays to be produced by the producer as hereinafter more specifically provided, and Industries hereby agrees to furnish the services of the artist to the producer hereunder and agrees that the artist will fully and completely keep and perform each and all of the agreements, [123] duties and obligations for the performance of which the services of the artist are to be furnished to the producer, as in this agreement provided. The term "photoplays", as used in this agreement, shall be deemed to include, but not be limited to, motion picture productions, produced and/or exhibited with sound and voice recording, reproducing, and/or transmitting devices, radio devices, and all other improvements and devices which are now or may hereafter be used in con-

nection with the production and/or exhibition and/or transmission of any present or future kind of motion picture productions.

3. Industries agrees that the artist will act, pose and appear solely and exclusively for and as requested by the producer hereunder; that he will promptly and faithfully comply with all reasonable instructions, requests, rules and regulations made by the producer in connection herewith; and that he will perform and render his services hereunder conscientiously and to the full limit of his ability and as instructed by the producer, at such times and places as the producer may designate.

4. Industries agrees that at all the times during which, under the terms of this agreement, the services of the artist are to be rendered for the producer, such services shall be rendered solely and exclusively for the producer, and that the artist will not during any such times render his services as an actor, or pose, act, appear, write, direct or render any other services in any way connected with motion pictures or photoplays, nor will he render any services of any kind or character whatsoever in any way connected with dramatic, theatrical, musical, vaudeville, radio, television or other productions, shows, performances and/or entertainment, nor will he render any similar services to or for himself or for Industries or to or for any person, firm or corporation other than the producer, without the written consent of the producer first

had and obtained. Industries further agrees that it will not consent to nor authorize nor permit any other person to advertise, announce or make known, directly or indirectly, by paid advertisements, press notices or otherwise, that the artist has contracted to do or perform any act or services contrary to the terms of this agreement. The producer shall have the right to institute any legal proceedings, in the name of Industries and/or the artist and/or otherwise, to prevent such acts, or any of them.

5. Industries expressly gives and grants to the producer the sole and exclusive right to photograph and/or otherwise reproduce any and all of the artist's acts, poses, plays and appearances of any and all kinds in connection with the photoplays in which the artist is to appear hereunder, and to record his voice and all instrumental, musical and other sound effects produced by him, and to reproduce and/or transmit the same, either separately or in conjunction with such acts, poses, plays and appearances as the producer may desire; and further gives and grants to the producer solely and exclusively all rights of every kind and character whatsoever in and to the same, or any of them, perpetually, including as well the perpetual right to use the name of the artist and pictures or other reproductions of the artist's physical likeness, recordings and reproductions of the artist's voice in connection with the advertising and exploitation thereof. The producer shall have the right to "double" or

“dub” the acts, poses, plays and appearances of the artist [124] and, as well, the voice of the artist and all instrumental, musical and/or other sound effects to be produced by the artist to such extent as may be desired by the producer, such doubling or dubbing as to the artist’s voice, however, to be only in such foreign language and/or languages as may be designated or desired by the producer, except that the same may be in the English language in the following events:

(a) When necessary to expeditiously meet censorship requirements;

(b) In connection with hazardous acts which might result in physical injury to the artist;

(c) In connection with “long shots” and “process shots”;

(d) In the event of failure, refusal or neglect on the part of the artist to comply with the duties and obligations which Industries herein agrees will be performed by him, or when the artist is not available; and

(e) When the artist is unable to meet certain special requirements of a role which requires particular knowledge, talent or ability other than that possessed by the artist.

Industries also hereby grants to the producer the sole and exclusive right to make use of and distribute the name of the artist and pictures, photographs and other reproductions of the artist’s

physical likeness and recordations and reproductions of the artist's voice for advertising, commercial and/or publicity purposes in connection with advertising, publicity and/or exploitation in which the title of the photoplay or photoplays in which the artist renders services hereunder also appears; provided, however, that the rights herein granted to the producer shall be used for such commercial purposes only if a reproduction of the physical likeness of all other principal members of the cast is also reproduced in conjunction with that of the artist or, if the names of all other principal members of the cast are used in conjunction with the artist's name in cases where the name and not the physical likeness of the artist is used. Industries agrees that neither it nor the artist will at any time during said term grant the right to, authorize or willingly permit any person, firm or corporation, other than the producer, to make use of the name of the artist or to make use of or distribute his pictures, photographs or other reproductions of his physical likeness, excepting only as hereinafter more specifically provided, and the producer is authorized, in the name of Industries and/or the artist and/or otherwise, to institute any proper legal proceedings to prevent such acts or any of them.

6. In the event that the producer desires at any time or from time to time to apply, in its own name or otherwise, but at its own expense, for life, health, accident, or other insurance covering the artist, In-

dustries agrees that the producer may do so and may take out such insurance for any sum which the producer may deem necessary to protect [125] its interests hereunder. The artist shall have no right, title or interest in or to such insurance, but Industries agrees that the artist nevertheless will assist the producer in procuring the same by submitting to the usual and customary medical and other examinations and by signing such applications and other instruments in writing as may reasonably be required by such insurance company or companies. Any and all policies of life, health or other insurance covering the artist obtained by the producer hereunder may be taken over and assumed by the artist upon the completion of all services to be performed by the artist in connection with all of the photoplays in which the artist is to appear hereunder, provided that Industries or the artist makes all necessary arrangements with and obtains all necessary consents of the insurance company or companies writing such insurance, upon payment to the producer of the cash surrender value, if any, of the policy or policies desired to be taken over or assumed by the artist.

7. The periods of weeks hereinafter in paragraph 16 provided for with respect to each photoplay in which the artist is to appear hereunder will hereafter for convenience, as to each such photoplay, be hereinafter referred to as the "specified period". For the purposes of this agreement, ex-

cept as hereinafter otherwise provided, each photoplay in which the artist is to appear for the producer hereunder shall be deemed to be "in production" from the date on which the artist is scheduled by the producer to report to the producer in connection with such photoplay until the production of such photoplay is completed or until the date of any cancellation of such photoplay; it being expressly understood that the prevention or postponement of the commencement of the artist's services in any such photoplay by reason of the happening of any of the contingencies specified in paragraphs 7, 8 or 9 hereof shall have the same effect as though such contingencies had occurred during the actual rendition of the artist's services in connection with such photoplay. If while any such photoplay is in production the artist shall be incapacitated by reason of mental or physical disability or otherwise from fully performing the terms or complying with each and all of his obligations hereunder or if he suffer any facial or physical disfigurement materially detracting from his appearance on the screen or interfering with his ability to perform properly his required services hereunder or if his present facial or physical appearance be materially altered or changed or if he suffer any impairment of his voice materially affecting his ability to perform properly hereunder (such disability and/or incapacity and/or facial and/or physical disfigurement and/or change of

appearance and/or impairment of voice being sometimes hereinafter for convenience referred to as "illness"), then and in either or any of said events the obligations of the producer under this agreement shall be suspended during the period of such illness, and the period of such suspension shall not be included in computing the "specified period" applicable to the photoplay in respect of which such suspension shall have occurred. During the period of such, or any, suspension pursuant to any right therefor herein given, no payments whatsoever shall be made to Industries by the producer. In the event of the continuance of such illness for a period or aggregate of periods in excess of two (2) weeks while any photoplay in which the artist is to appear for the producer hereunder is in production, the producer shall have the right, at its option, to terminate the employment of the artist with respect to the photoplay in respect of which such illness shall have occurred. In the event of such termination with reference to such photoplay the producer may nevertheless complete such [126] photoplay with another person in the role which was being or was to have been portrayed by the artist therein, and the completion of such photoplay with such other person shall not affect the producer's right of termination with respect to such photoplay. The number of photoplays in which the producer is obligated to furnish employment to the artist hereunder and with respect to

which Industries is entitled to compensation hereunder shall be reduced by the number of photoplays in connection with which the producer may exercise its right of termination. It is agreed that if either Industries or the artist allege that the artist is incapacitated by illness or other disability or incapacity from the full and faithful performance of this agreement the producer shall have the right, at its option, to have medical examinations of the artist made by such physician or physicians as the producer may designate.

8. If, while any photoplay in which the artist is to appear hereunder is "in production" (as said phrase "in production" is hereinabove defined), the production activities of the producer with respect to such photoplay be materially hampered, interrupted or interfered with by reason of fire, casualty, strike, labor conditions, lockouts, war, act of God, or by the enactment of any municipal, state or federal ordinance or law, or by the issuance of any executive or judicial order, whether municipal, state or federal, or by any other legally constituted authority, or by any other cause of the same or any similar kind or character, or if for any reason whatsoever the majority of the motion picture theatres in the United States shall be closed for a week or any period in excess of a week, the obligations of each of the parties hereto under this agreement, at the option of the producer, shall be suspended likewise during the continuance of such

event or events, and the period or periods of the continuance of such event or events shall not be included in computing the "specified period" applicable to the photoplay in connection with which the artist was rendering or was to have rendered his services at the time of the occurrence of such event or events. In the event of the continuance of such event or events for a period or aggregate of periods in excess of four (4) weeks while any photoplay in which the artist is to appear hereunder is in production, then and in either of said events Industries or the producer, at their or its option, may elect to terminate the artist's employment in respect of such photoplay; provided, however, that should Industries desire to elect to terminate the artist's employment in connection with such photoplay it shall serve notice of such desire upon the producer, and if the producer should not resume the payment of such installment or installments, if any, as would be payable to Industries hereunder in the absence of the happening of such event or events, commencing as of not later than two (2) days after the receipt of such notice from Industries, then and in that event the employment of the artist hereunder in connection with such photoplay shall be terminated. If the producer should resume the payment of such installments, commencing as of not later than two (2) days after the receipt of such notice, then and in that event the employment of the artist in connection with such

photoplay shall not be terminated, but shall continue in full force and effect. In the event of the termination of the employment of the artist in respect of any photoplay pursuant to the preceding provisions of this paragraph, the producer shall be released from the obligation to pay any installment or installments of compensation to Industries in connection with the photoplay as to which such termination is effective, accruing after the date of such termination.

9. It is distinctly understood and agreed by and between the [127] parties hereto that the service to be rendered by the artist under the terms hereof, and the rights and privileges granted to the producer by Industries under the terms hereof, are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and that a breach by the artist and/or by Industries of any of the provisions contained in this agreement will cause the producer irreparable injury and damage. Industries hereby expressly agrees that the producer shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by the artist and/or by Industries. This provision, however, shall not be construed as a waiver of any other rights that the producer may have in the premises, for damages or otherwise. Any failure on the part of Industries to perform

and/or comply with its obligations hereunder or any failure, refusal or neglect on the part of the artist to perform any of the obligations and/or agreements which Industries agrees will be performed by the artist, hereunder, will hereinafter for convenience be referred to as a "breach". In addition to all other rights and remedies which the producer may have, the producer, at its option, in the event of any breach, shall have the right to refuse to pay Industries any compensation during the continuance of such breach. The producer shall have the further right at any time during the continuance of such breach, to terminate this agreement, or, if it so desires, the producer may terminate the employment of the artist only as to the photoplay with respect to which such breach shall have occurred, in which latter case the total number of photoplays in connection with which the producer is obligated hereunder to employ the artist, shall be reduced accordingly. The producer shall have the further right, at its option, at any time during the continuance of such breach, to complete the photoplay with respect to which such breach shall have occurred with another person in the role which was being or which was to have been portrayed by the artist therein, and in such case this agreement shall be suspended both as to services and as to the payment of any installment or installments of compensation to Industries during the period reasonably required for such other

person to complete such photoplay, and the total number of photoplays in connection with which the producer is obligated hereunder to employ the artist shall be reduced accordingly. If because of any breach the employment of the artist shall have been terminated with respect to the photoplay in connection with which such breach shall have occurred, or if another person shall have been substituted to complete the artist's role in such photoplay, as herein provided, all installments of compensation paid by the producer to Industries with respect to such photoplay prior to such termination or substitution shall be applied against the compensation payable to Industries with respect to the next photoplay in connection with which the producer is obligated hereunder to employ the artist; provided, however, that if any such termination or substitution shall have occurred in connection with the last photoplay in which the artist is to appear hereunder, or if because of any such breach occurring in connection with any photoplay the producer shall have terminated this agreement in its entirety, all installments of compensation paid by the producer to Industries with respect to such photoplay prior to such termination or substitution shall be repaid by Industries to the producer on demand. In addition to all other rights and remedies herein given the producer in event of any breach of this agreement by Industries and/or the artist, the producer, at its option, shall have the

right to suspend all of the producer's obligations under [128] this agreement during the duration of such breach and the period of such suspension shall not be included in computing the "specified period" applicable to the photoplay in respect of which such suspension shall have occurred. Each and all of the several rights, remedies and options of the producer contained in this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or priority allowed by law.

10. No waiver by the producer of any breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or provision.

11. All notices which the producer is required or may desire to give the artist or Industries or both may be given by addressing the same either to Industries or the artist, or both, in care of Frank Joyce-Myron Selznick, Ltd., 9460 Wilshire Blvd., Beverly Hills, California, or by addressing the same to such other address as may be designated from time to time in writing by Industries or the artist, and in either case by depositing the same so addressed postage prepaid in the United States mail at Culver City or Los Angeles, California; or by delivering the same so addressed to any telegraph or cable company, or, at its option, the producer may deliver such notice as it is required or may

desire to give the artist or Industries to the artist personally or to any officer of Industries either in writing, or unless otherwise specified herein, orally. If the producer elect to mail such notice or to send the same by telegraph or cable then the date of mailing thereof or the date of delivery to the telegraph or cable office, whichever method may be selected by the producer shall be the date of the service of such notice. Notice given either to the artist or to Industries as aforesaid shall for all purposes be and be deemed to be notice to both the artist and to Industries.

12. The producer shall provide, at its own expense, all visible wardrobe necessary for any and all roles to be portrayed by the artist hereunder, but the artist agrees to use for any such role any wardrobe owned by the artist which is proper for the purpose, it being agreed that all wardrobe furnished or paid for by the producer shall be the property of the producer and returned promptly to it.

13. Should the artist be required to perform any services hereunder in any place other than the city of Los Angeles, California, or its environs, the producer shall pay for and/or furnish the necessary and reasonable food, lodging and transportation (including drawing room, when available) reasonably required for the artist and the artist's valet on account of the rendition of such services.

14. In the event of the merger or consolidation of the producer with any other corporation or corporations, or in the event of the sale or transfer by the producer of a major portion of its assets, or of its business or good-will, then and in either or any of said events the producer shall have the right to assign and/or transfer its rights hereunder in whole or in part to such successor in interest of the producer, and in the event of such assignment or transfer the artist shall continue to perform his duties and obligations according to the terms and tenor hereof, to or for such assignee and/or transferee. [129]

15. The producer agrees to give the name of the artist credit as star or co-star on the screen and in advertising and paid publicity issued by the producer in connection with each photoplay in which the services of the artist are completed hereunder. Such credit shall be given in type at least as large as that in which the name of the person or persons costarred with the artist is displayed and shall precede the name of any other member of the cast except only the name of one recognized female star of outstanding reputation. If the artist is starred such credit shall be given in type larger than that used to display the name of any other member of the cast and shall precede the name of any other member of the cast. Nothing herein contained shall be construed so as to prevent so-called "teaser" and/or special advertising, publicity and/

or exploitation relating to the story upon which each respective photoplay is based, any of the members of the cast, the director, the author, or similar matters, without mentioning the name of the artist, or as to prevent so-called "trailer" or other advertising on the screen without mentioning the name of the artist, and no casual or inadvertent failure to comply with the provisions of this paragraph shall constitute a breach of this agreement.

16. The producer agrees to pay Industries for all rights herein granted and/or agreed to be granted to the producer and for the full and complete performance by Industries of each and all of its obligations and agreements hereunder and for the full and complete performance by the artist of each and all of the obligations and agreements which Industries agrees will be performed by the artist, the sum of Seventy-five Thousand Dollars (\$75,000.00) for each photoplay in which the artist completes his services for the producer during the original term hereof. Said compensation shall entitle the producer to the exclusive services of the artist in connection with each photoplay for a period of thirteen (13) weeks from and after the date of commencement of the services of the artist in connection with such photoplay, exclusive of the period or periods of the continuance of any of the contingencies referred to in paragraphs 7, 8 and 9 hereof. Upon the expiration of said thirteen (13) weeks period the artist, for a period of two (2)

weeks, shall be subject to call and shall keep himself available for the purpose of making retakes, added scenes and/or changes, and the producer shall not be liable to pay any compensation during said period of two (2) weeks, unless the artist's services are actually used by the producer, in which event the compensation therefor shall be at the rate hereinafter prescribed, either weekly or daily, as the case may be. Said period of thirteen (13) weeks, computed as herein provided plus the extension for not more than two (2) additional weeks as aforesaid, is the period, which, as applied to each photoplay, is herein referred to as the "specified period". The compensation payable by the producer hereunder shall, as to each photoplay, be payable at a weekly rate which shall be an amount equivalent to one-thirteenth ($1/13$ th) of the total compensation payable to the artist in connection with such photoplay, which shall be payable on Saturday of each week covering the period up to and including the Wednesday preceding. Should the portrayal of the artist's role in any photoplay, including retakes, added scenes and/or changes, be completed prior to the payment to Industries of the full compensation payable by the producer for the entire specified period applicable to such photoplay, the entire unpaid balance of such compensation shall be payable to Industries upon the completion of such role [130] including retakes, added scenes and/or changes. Should the artist's

services in connection with the ordinary photographing of his role in any photoplay be required by the producer after the expiration of the specified period applicable to such photoplay, compensation for such time thereafter as the artist's services are required by and actually rendered for the producer in connection with such ordinary photographing shall be payable to Industries at a weekly rate which shall be equivalent to one-thirteenth ($1/13$ th) of the designated amount payable to Industries with respect to such photoplay. In computing the amount of the installment of compensation payable to Industries in respect of any week during which the services of the artist shall have been rendered for less than a full week, the weekly rate shall be prorated and for this purpose the daily rate shall be one-sixth ($1/6$ th) of the weekly rate. If after the completion of the ordinary photographing of the artist's role in any photoplay the producer should desire the additional services of the artist in the making of retakes, added scenes and/or changes in connection with such photoplay, Industries agrees that the artist will render such services for the producer at such time or times as may be required by the producer until the same are completed. The producer agrees, however, that it will exert every effort to the end that such retakes, added scenes and/or changes will be completed as soon after the completion of ordinary photography of such photoplay as is reasonably practical. Should

the services of the artist be required in connection with retakes, added scenes and/or changes for any photoplay after the expiration of the specified period with respect to such photoplay, then and in that event compensation for such services in retakes, added scenes and/or changes shall be payable for the period or term commencing with the day next following the expiration of such specified period and ending with the last day upon which the artist is so required to render such services. In computing the amount of compensation payable during the said last mentioned term or period in respect of any week during which such services of the artist shall have been so rendered for less than a full week, the weekly rate shall be prorated and for this purpose the daily rate shall be one-sixth ($\frac{1}{6}$ th) of the weekly rate. Notwithstanding anything hereinabove set forth, it is understood and agreed that should the artist be required to render his services in connection with retakes, added scenes and/or changes for any one photoplay during the specified period of any subsequent photoplay in which he is then appearing for the producer hereunder, the artist shall render his services in the making of such retakes, added scenes and/or changes as and when required so to do by the producer, but the producer agrees that it will not require the artist, without his consent, to render his services in two photoplays on the same day, and although no compensation for the rendition by the artist

of his services in such retakes, added scenes and/or changes shall under such circumstances be paid to Industries, nevertheless, the day or days on which such services are so rendered by the artist shall be considered as part of the specified period of such subsequent photoplay and shall be paid for as such by the producer.

17. The photoplays in which the artist is to appear hereunder and the roles to be portrayed by the artist therein shall be selected by the producer. The producer agrees that it will produce the two photoplays herein provided to be made during the specified term consecutively, if Industries or the producer are able to make arrangements with [131] London Film Productions, Limited, so that the services of the artist will be available. If such arrangements cannot be made with London Film Productions, Limited, then Industries agrees that it will notify the producer at least sixty (60) days in advance of the date on which the services of the artist will be available for the making of each photoplay during the specified term, and shall notify the producer at least sixty (60) days in advance when the services of the artist will be available to commence the rendition of his services in making the photoplays provided for in each option period hereunder. In this connection, it is expressly agreed that the photoplays to be made in each of said option periods shall be made consecutively; if after giving any such sixty day notice, the artist

is delayed in reporting to the producer at its studios at Culver City, California, then the period with respect to which said sixty day notice shall have been given shall be extended for a time equal to the difference between the date specified in said sixty day notice and the date on which the artist actually reports. Industries agrees that the artist will report to the producer pursuant to any such notice given by it, at its studios at Culver City, California, or at such other place as the producer may designate, and that if after having given such a sixty day notice Industries ascertains within thirty days after the giving of such sixty day notice that the services of the artist will not be available upon the date specified in said notice, it shall immediately notify the producer in writing of such fact and specify a subsequent date not more than sixty (60) days after the service of said last mentioned notice, upon which subsequent date the services of the artist will be available, and thereafter, but without affecting the obligation of Industries and/or the artist to have the artist report at the time provided in said second notice, Industries and/or the artist from time to time shall advise the producer of the probable date upon which the artist will actually so report in order that the producer in making the necessary arrangements to avail itself of the artist's services, will be inconvenienced to the least extent possible. The two photoplays in which the artist is to appear during

the original term hereof shall be produced (except as hereinafter otherwise provided) during the period commencing on the day next following the expiration of that certain contract between the producer and Industries dated July 6, 1934, and continuing until the expiration of one year after March 1, 1935, unless such period be extended or be sooner terminated as elsewhere in this agreement provided. In this connection, it is agreed that the first photoplay to be made during the original term shall, if it can be so arranged with London Film Productions, Limited, be entitled "He Who Gets Slapped", and shall commence (a) immediately upon the expiration of the contract between the producer and Industries, dated July 6th, 1934, or (b) immediately upon the completion of the artist's services to be rendered to the producer under the proposed contract (if executed) between the producer and Industries in connection with the rendition of the artist's services in connection with the production of the photoplay "David Copperfield", whichever is later. In computing said period of one year after March 1, 1935, and any and all following yearly periods herein referred to, there shall be excluded any and all periods during which any of the contingencies referred to in paragraphs 7, 8 and 9 hereof shall have continued. If at the time of the expiration of said period of one year after March 1, 1935, or of any yearly period herein referred to, the artist is engaged in rendering [132]

services hereunder in connection with a photoplay then uncompleted, then the current one year period, at the option of the producer, may be extended for the time reasonably required to complete all services which the producer may require of the artist in connection with such photoplay. If and as often as there shall be an extension of any one year period, the commencement of the succeeding one year periods and, as well, the time for exercising the next following option shall be extended accordingly. The phrases "term of this agreement" or "term hereof" or their equivalent as used herein, shall be deemed to refer to the original period herein permitted for the production of said two photoplays, to-wit: to the period ending one year after March 1, 1935, (unless extended as herein elsewhere provided), or to any of the optional yearly periods hereinafter in paragraph 20 provided for, whichever may be current at the time referred to.

18. It is understood that the roles to be portrayed by the artist hereunder shall be assigned to the artist by Mr. Irving G. Thalberg (hereinafter referred to as "Mr. Thalberg"), and that the artist shall render and perform his required services hereunder under the supervision of Mr. Thalberg. If at the time any role is to be assigned to the artist hereunder or if during the time the artist is engaged in rendering his services in connection with the production of any photoplay hereunder Mr. Thalberg should become incapacitated or for any other

reason should be unable or unavailable (provided that Mr. Thalberg for the purposes of this agreement shall not be deemed to be so unable or unavailable while he is engaged in rendering services in the ordinary and customary manner to the producer otherwise than in connection with this contract) to assign such role or to supervise the work of the artist, the assignment of such role shall be made by and the services of the artist shall be rendered under the supervision of such other person or persons as may be designated by Mr. Thalberg. In the event of the continuance of the incapacity or unavailability of Mr. Thalberg for a period of four (4) months during the term hereof or in the event of the severance of Mr. Thalberg's relations with the producer, Industries shall have the right to discontinue the artist's services for the producer as to any further period or periods of the artist's employment hereunder; it being understood that such right, if exercised, shall become effective upon the expiration of the then current term of the artist's employment hereunder, but that the artist shall continue to render his services for the producer hereunder for the entire **unexpired balance** of the then current term hereof. In the event of the happening of any of the foregoing contingencies and in the event Industries should elect to exercise the rights of termination hereinabove specified, written notice of such election shall be served upon the producer by Industries not later than four (4)

weeks after written notice from the producer that the incapacity or unavailability of Mr. Thalberg has continued for four (4) months, or within four (4) weeks after notice from the producer of the severance of Mr. Thalberg's relations with the producer (whichever contingency may give rise to the exercise of said right). Such written notice from the producer, in either of the contingencies last above mentioned, shall be so served by the producer promptly after the continuance of such incapacity or unavailability for four (4) months, or promptly upon such severance of Mr. Thalberg's relations, as the case may be. In the event of such election on the part of Industries, Industries and the producer shall be released from [133] all obligations hereunder accruing after the expiration of the then current term of the artist's employment hereunder.

19. In connection with each photoplay in which the artist travels from England to Los Angeles to render his services for the producer hereunder, the producer shall furnish or pay for the reasonable cost of transportation for the artist, the artist's wife and the artist's valet from England to Los Angeles. The producer further agrees that if the artist should desire to return to England upon the completion of the artist's engagement in connection with such photoplay and if the artist is not to remain here to render services in connection with another photoplay, the producer will furnish or pay

for similar return transportation to England for the artist, the artist's wife and his valet; provided, however, that in no event shall the producer be obligated to furnish or pay for any return transportation for the artist or his wife or his valet if he returns to England or elsewhere to render services in a photoplay for London Film Productions, Limited, or any other foreign producer.

20. In consideration of the execution of this agreement by the producer and of the producer's consent to the amount of compensation herein specified, Industries hereby gives and grants to the producer the following rights or options:

(a) To employ and engage the services of the artist from Industries to render his services for the producer in roles to be selected by the producer in two (2) additional photoplays to be produced during the period of one (1) year next following the expiration of the period of one (1) year hereinabove in paragraph 17 referred to, upon the same terms and conditions as herein contained and set forth, except that the compensation payable to Industries for the artist's services in connection with each of said two (2) photoplays shall be the sum of Eighty-five Thousand Dollars (\$85,000.00).

(b) To employ and engage the services of the artist from Industries to render his services for the producer in roles to be selected

by the producer in two (2) additional photoplays to be produced during the period of one (1) year referred to in subdivision (a) of this paragraph 20, upon the same terms and conditions as herein contained and set forth, except that the compensation payable to Industries for the artist's services in connection with each of said two (2) photoplays shall be the sum of one hundred thousand dollars (\$100,000.00).

(c) To employ and engage the services of the artist from Industries to render his services for the producer in roles to be selected by the producer in two (2) additional photoplays to be produced during the period of one (1) year next following the expiration of the period of one (1) year referred to in subdivision (b) of this paragraph 20, upon [134] the same terms and conditions as herein contained and set forth, except that the compensation payable to Industries for the artist's services in connection with each of said two (2) photoplays shall be the sum of one hundred ten thousand dollars (\$110,000.00).

The option hereinabove in subdivision (a) granted to the producer may be exercised by the producer at any time prior to three (3) weeks after the commencement of photography of the second photoplay to be produced under this agreement. Each remaining option hereinbefore referred to may be exercised separately within thirty (30) days after

the completion of the artist's services with respect to the second photoplay in the yearly period during which the photoplays referred to in the next preceding option are to be produced or not later than forty-five (45) days before the end of such yearly period, whichever date is earlier or if Alexander Korda is not an independent motion picture producer in Europe and producing films of the same quality and standard as those now being produced by London Film and has not a major release for his film products then such option may be exercised at least ninety (90) days prior to the expiration of the yearly period commencing March 1, 1935, or of any additional yearly period herein provided for, may elect to exercise all or any of the options not already exercised, in which event the artist shall be engaged by the producer as provided in the option or options so exercised by the producer. The exercise by the producer of any one or more of said options shall not be construed as an election by the producer not to exercise the remaining options. All notices of the exercise of any option shall be in writing and shall be served upon Industries within the periods above specified.

21. Industries hereby warrants to the producer that under certain contractual obligations which Industries has with London Film Productions, Limited (hereinafter referred to as "London Film"), London Film has an option on the services of the artist during the period of one year com-

mencing March 1, 1936. It is the desire of Industries and the producer that the second photoplay in which the artist is to appear for the producer under this agreement shall, if possible, be produced prior to March 1, 1936, but if the producer is unable to make the arrangements necessary for the production of said second photoplay prior to March 1, 1936, then and in that event said second photoplay shall be produced as soon after March 1, 1936, as practical; and in the event that London Film exercises said option, then such second photoplay shall be produced during the one year period commencing March 1, 1936, if the producer or Industries are able to make the necessary arrangements therefor, or if the producer or Industries are unable to make the necessary arrangements therefor, then said second photoplay shall be produced as soon after March 1, 1937, as possible, and in such event the original term of this agreement shall be extended so that said second photoplay may be completed by the producer hereunder. Industries agrees to notify the producer in writing prior to February 1, 1936, as to whether or not said option has been exercised by London Film. It is further understood and agreed that in the event of the exercise of said option by London Film then, notwithstanding anything contained in paragraph 20 the period of one year during which the photoplays provided [135] for in subdivision (a) of said paragraph 20 are to be produced, shall be postponed, and

shall in the event of such postponement, commence on the day next following the expiration of the yearly period for which such option shall have been exercised by London Film; provided, however, that if the second photoplay to be produced hereunder is not completed until after the expiration of the yearly period for which such option has been exercised by London Film, then the period of one year during which the photoplays provided for in subdivision (a) of paragraph 20 are to be produced shall be postponed until the day next following the completion of said second photoplay. Notwithstanding anything herein to the contrary, if arrangements may be made with London Film or if the contract with London Film is, for any reason, terminated, then the next photoplay or option period, whichever may be, shall be commenced by Industries giving the sixty day notice hereinbefore referred to.

22. Notwithstanding anything herein to the contrary, Industries reserves the right after the completion of the services of the artist pursuant to his contract with said London Film (after the principal term if the option herein contained is not exercised or after the option period if said option is exercised) to produce or cause to be produced or hire or lend the services of the artist in the making of two (2) motion picture photoplays in each one year period in England. Industries shall have the right without consulting Metro-Goldwyn-Mayer

Corporation to contract with London Film so long as Alexander Korda is still associated with London Film or with said Korda as long as he is an independent producer of motion pictures in Europe and is producing motion pictures of substantially the same quality and standard as those now being produced by London Film and has a major release for his motion picture products, to produce said photoplays or either of them and if no such contract to produce both of said photoplays is made by Industries with London Film Metro-Goldwyn-Mayer Corporation shall then have the first right to produce said photoplays and/or either of them not so contracted for, in England if it so desires to produce the same pursuant to all the terms hereof. If Metro-Goldwyn-Mayer Corporation shall become vested with the right to produce said photoplays and/or either of them in England as aforesaid, Industries shall notify Metro-Goldwyn-Mayer Corporation of the artist's intention to render his services in each of said photoplays, and the producer shall have two weeks after the receipt of such notice within which to notify Industries of its election to produce such photoplay and/or either or any of them referred to in said notice from Industries in England. The artist's employment in connection with such photoplays or either or any of them, should the foregoing right or rights be exercised by the producer, shall be governed by the same terms and conditions herein contained, and compen-

sation therefor shall be payable to Industries in the same amount and in the same manner as is payable with respect to the other photoplays in which the artist appears for the producer hereunder during the term concerned, except that the producer shall have the right to pay such compensation in British pounds sterling (instead of American dollars) at the rate of exchange then current. If the producer does not exercise said election within said period of time, then Industries shall be free to contract for the services of the artist in such photoplay on condition, however, that such photoplay must be produced in England or elsewhere but not in North America and must be produced either by London Film, so long as Alexander Korda is [136] still associated with London Film, or by another English producer of approximately the same standing and reputation as the present standing and reputation of London Film. If said Korda is no longer associated with London Film then in selecting the producer for such photoplay preferred consideration shall be given to said Korda or to the English producer with whom he is then associated. Industries agrees that in the event such other producer, pursuant to the terms hereof, produces any such other photoplay, Industries will only contract for the rendition of the services of the artist at a time not to conflict with the then schedule of the producer herein for the services of the artist.

It is the intention of the parties hereto that the services of the artist shall be utilized in the making of four (4) photoplays during each yearly period hereof, after the expiration or termination of the contract with London Film; that two of said photoplays will be made for the producer hereunder in the United States, and two shall be made in England, as herein provided. The photoplays to be made for the producer hereunder are to be consecutive, and the photoplays to be made in England are to be made consecutively. If the services of the artist in the making of the two photoplays for the producer hereunder in the United States, or in the making of the two photoplays in England for the producer hereunder, or for any other producer as herein provided, are required longer than twenty-six (26) weeks, then the time for the making of the remaining two photoplays during said option period (whether it be for the producer in the United States or for the producer herein or some other producer in England) shall be extended for a period of time equivalent to the time beyond twenty-six weeks during which the services of the artist are utilized in making the two preceding photoplays.

23. Notwithstanding anything herein to the contrary, it is expressly agreed by and between the parties hereto as follows:

1. That the services of the artist, except when pursuant to the terms hereof the same are to be

rendered for the producer, may be rendered for any other producer or in any other manner whatsoever, including but not limited to any dramatic, theatrical, musical, vaudeville, radio, television or other productions, shows, performances and/or entertainments; provided, however, that *is* is not intended under the provisions of this subparagraph 1, nor shall anything in said subparagraph be construed to permit the artist to render any services whatsoever as an actor in the making or producing of any photoplay or motion picture excepting the photoplays contemplated to be made with the artist and herein elsewhere specifically described or referred to.

2. That the artist shall not be required to render or perform in any radio performances.

3. That if Industries should at any time elect not to utilize the services of the artist in England, the producer will, upon receiving not less than sixty (60) days' notice in writing, so notifying it, utilize the services of the artist pursuant to the terms hereof in three [137] photoplays, with the right hereby given the producer to make four instead of three photoplays in any option period in which such a notice shall have been given it, in lieu and instead of two photoplays.

24. Concurrently herewith, the producer is entering into a contract for the services of Elsa Lanchester, wife of the artist. It is expressly agreed

that if, and in the event that said contract of said Elsa Lanchester is terminated and cancelled by the producer for any reason other than (a) her failure without cause to fulfill and perform her obligations under said contract and/or (b) pursuant to any right therefor given to the producer under the terms of paragraph 5 of the contract between the producer and said Elsa Lanchester of even date herewith, then and in any or either such event this contract may be cancelled, provided, however, that the services of the artist shall be continued to be rendered until the completion of any photoplay in which he may then be engaged.

25. The producer agrees, at its own expense, to furnish and provide a "stand-in" to the artist during the time the artist is enacting any role hereunder.

In witness whereof, the parties hereto have executed this agreement the day and year first above written.

**METRO-GOLDWYN-MAYER
CORPORATION**

By (signed) E. J. MANNIX
Vice-President

**MOTION PICTURE AND
THEATRICAL INDUSTRIES
LIMITED**

By (signed) LOYD WRIGHT
Its Attorney-in-Fact. [138]

As an inducement to Metro-Goldwyn-Mayer Corporation (hereinafter referred to as "Metro") to execute the foregoing agreement between Metro and Motion Picture and Theatrical Industries, Limited (hereinafter referred to as "Industries") and as a material part of the consideration moving Metro to enter into said agreement, the undersigned hereby consents to the execution of said agreement by Industries and agrees to be bound thereby. Specifically, but without in any way limiting the generality of the foregoing, the undersigned expressly agrees that he will fully and faithfully keep and perform each and all of the services, obligations and agreements which, under the terms of said agreement, Industries agrees and guarantees will be kept and performed by the undersigned, as fully and to the same extent as though said agreement were made solely between Metro and the undersigned and as though the compensation payable by Metro under said agreement were to be paid directly to the undersigned, and the undersigned agrees that he will keep and perform any and all agreements, duties and obligations assumed by Industries under said agreement so far as the full performance thereof necessitates that the undersigned do or refrain from doing any act or thing. The undersigned hereby expressly authorizes Metro to pay all compensation accruing under the foregoing agreement, directly to Industries, and hereby releases and discharges Metro of and from any and all claims

and demands of every kind which the undersigned may have for the payment to the undersigned of any compensation accruing under said agreement or for any services rendered by the undersigned in connection with the photoplays referred to therein. The undersigned further hereby joins in and reaffirms as his own and for his own behalf each and all of the representations and warranties made by Industries under the terms of the foregoing agreement, and further hereby guarantees to Metro the full and faithful performance by Industries of each and all of its obligations and agreements under the terms of said agreement.

Dated: August 25th, 1934.

CHARLES LAUGHTON (signed)
[139]

EXHIBIT "L"

STIPULATION OF FACTS

This Agreement made and entered into this 21st day of December, 1934, by and between Twentieth Century Pictures, Inc., a New York corporation, hereinafter referred to as the "producer", and Motion Picture and Theatrical Industries, Limited, a company organized under the Companies Act of 1929 of England, hereinafter referred to as "Industries",

Witnesseth:

For and in consideration of the covenants, conditions, warranties, representations and agreements hereinafter contained and set forth, the parties hereto have agreed and do hereby agree as follows:

1. Industries hereby warrants and represents to the producer that Industries and Charles Laughton, hereinafter referred to as the "artist", have heretofore entered into an agreement with each other whereby Industries has become entitled to the services of the artist for a period extending for at least the length of time that the producer will be entitled to the services of the artist hereunder. The producer is desirous of obtaining the sole and exclusive services of the artist as hereinafter provided, and Industries desires and is willing to permit the producer so to employ the artist upon the terms hereinafter provided. Industries represents and warrants to the producer that the artist expects to benefit by the execution and carrying out of this agreement by the parties hereto and as an inducement to the producer to enter into this agreement Industries agrees and guarantees that the artist will fully and faithfully keep and perform each and all of the services, obligations and agreements which are to be kept and performed by the artist under the terms of this agreement, as fully as though this agreement were made solely between the producer and the artist and as though the compensation payable by the producer hereunder were to be paid directly to the artist. In-

dustries further agrees and guarantees that the artist will keep and perform any and all agreements, duties and obligations assumed by Industries hereunder so far as the full performance thereof necessitates that the artist do or refrain from doing any act or thing; and Industries agrees that it will keep and perform any agreements, duties or obligations assumed or which Industries agrees will be performed by the artist hereunder, so far as the full performance thereof necessitates that Industries do or refrain from doing any act or thing.

2. Pursuant to the provisions of the preceding paragraph the producer hereby employs and engages the artist to render his services in the portrayal of the role of "Javert" in a photoplay to be produced by the producer based upon "Les Misérables", and Industries hereby agrees to furnish the services of the artist to the producer hereunder and agrees that the artist will fully and completely keep and perform each and all of the agreements, duties and obligations for the performance [140] of which the services of the artist are to be furnished to the producer, as in this agreement provided. The term "photoplay", as used in this agreement, shall be deemed to include, but not be limited to, a motion picture production, produced and/or exhibited with sound and voice recording, reproducing, and/or transmitting devices, radio devices, and all other improvements and devices which are now or may hereafter be used in connection with the production

and/or exhibition and/or transmission of any present or future kind of motion picture productions.

3. Industries agrees that during the term hereof the artist will act, pose and appear solely and exclusively for and as requested by the producer hereunder; that he will promptly and faithfully comply with all reasonable instructions, requests, rules and regulations made by the producer in connection herewith; and that he will perform and render his services hereunder conscientiously and to the full limit of his ability and as instructed by the producer, at such times and places as the producer may designate.

4. Industries further agrees that the artist will not during said term render his services as an actor, or pose, act, appear, write, direct or render any other services in any way connected with motion pictures or photoplays, nor will he render any services of any kind or character whatsoever in any way connected with dramatic, theatrical, musical, vaudeville, radio, television or other productions, shows, performances, and/or entertainment, nor will he render any similar services to or for himself or for Industries or to or for any person, firm or corporation other than the producer, without the written consent of the producer first had and obtained. Industries further agrees that it will not consent to nor authorize nor permit any other person to advertise, announce or make known, directly or indirectly,

by paid advertisements, press notices or otherwise, that the artist has contracted to do or perform any act or services contrary to the terms of this agreement. The producer shall have the right to institute any legal proceedings, in the name of Industries and/or the artist and/or otherwise, to prevent such acts, or any of them.

5. Industries expressly gives and grants to the producer the sole and exclusive right to photograph and/or otherwise reproduce any and all of the artist's acts, poses, plays and appearances of any and all kinds in connection with the photoplay in which the artist is to appear hereunder, and to record his voice and all instrumental, musical and other sound effects produced by him, and to reproduce and/or transmit the same, either separately or in conjunction with such acts, poses, plays and appearances as the producer may desire; and further gives and grants to the producer solely and exclusively all rights of every kind and character whatsoever in and to the same, or any of them, perpetually, including as well the perpetual right to use the name of the artist and pictures or other reproductions of the artist's physical likeness, and recordations and reproductions of the artist's voice in connection with the advertising and exploitation thereof. The producer shall have the right to "double" or "dub" the acts, poses, plays and appearances of the artist and, as well, the voice of the artist and all instrumental, musical and/or other

sound effects to be produced by the artist to such [141] extent as may be desired by the producer, such doubling or dubbing as to the artist's voice, however, to be only in such foreign language and/or languages as may be designated or desired by the producer, except that the same may be in the English language in the following events:

(a) When necessary to expeditiously meet censorship requirements;

(b) In connection with hazardous acts which might result in physical injury to the Artist;

(c) In connection with "long shots" and "process shots";

(d) In the event of failure, refusal or neglect on the part of the artist to comply with the duties and obligations which Industries herein agrees will be performed by him, or when the artist is not available; and

(e) When the artist is unable to meet certain special requirements of a role which requires particular knowledge, talent or ability other than that possessed by the artist.

Industries also hereby grants to the producer the sole and exclusive right to make use of and distribute the name of the artist and pictures, photographs and other reproductions of the artist's physical likeness and recordings and reproductions of the artists's voice for advertising, commercial and/or

publicity purposes in connection with advertising, publicity and/or exploitation in which the title of the photoplay in which the artist renders services hereunder also appears.

6. The period of five (5) weeks hereinafter in paragraph 14 provided for will hereinafter for convenience be referred to as the "specified period". For the purposes of this agreement the photoplay "Les Miserables" shall be deemed to be "in production" from on or about January 14, 1935, until the production of said photoplay is completed; it being expressly understood that the prevention and/or postponement of the artist's services in said photoplay by reason of the happening of any of the contingencies specified in paragraphs 6, 7, or 8 hereof shall have the same effect as though such contingencies had occurred during the actual rendition of the artist's services during said photoplay. If while said photoplay is in production the artist shall be incapacitated by reason of mental or physical disability or otherwise from fully performing the terms or complying with each and all of the obligations which Industries agrees will be performed by him hereunder or if he suffer any facial or physical disfigurement materially detracting from his appearance on the screen or interfering with his ability to perform properly his services hereunder or if his present facial or physical appearance be materially altered or changed or if he suffer any impairment of his voice materially affecting his ability

to perform properly hereunder (such disability and/or incapacity and/or facial and/or physical disfigurement and/or change of appearance and/or impairment of voice being sometimes hereinafter [142] for convenience referred to as "illness"), then and in either or any of said events the obligations of the producer under this agreement shall be suspended during the period of such illness, and the period of such suspension shall not be included in computing the "specified period". During the period of such suspension no payments whatsoever shall be made to Industries by the producer. In the event of the continuance of such illness for a period or aggregate of periods in excess of six (6) days while said photoplay is in production, the producer shall have the right, at its option, to terminate the employment of the artist hereunder. In the event of such termination the producer may nevertheless complete such photoplay with another person in said role, and the completion of such photoplay with such other person shall not affect the producer's right of termination. It is agreed that if either Industries or the artist allege that the artist is incapacitated by illness or other disability or incapacity from the full and faithful performance of this agreement the producer shall have the right, at its option, to have medical examinations of the artist made by such physician or physicians as the producer may designate.

7. If, while said photoplay is "in production" (as said phrase "in production" is hereinabove defined,) the production activities of the producer with respect to said photoplay be materially hampered, interrupted or interfered with by reason of fire, casualty, strike, labor conditions, lockouts, unavoidable accident, war, act of God, or by the enactment of any municipal, state or federal ordinance or law, or by the issuance of any executive or judicial order, whether municipal, state or federal, or by any other legally constituted authority, or by any other cause of the same or any similar kind or character, or if for any reason whatsoever the majority of the motion picture theatres in the United States shall be closed for a week or any period in excess of a week, the obligations of each of the parties hereto under this agreement, at the option of the producer, shall be suspended likewise during the continuance of such event or events, and the period or periods of the continuance of such event or events shall not be included in computing the "specified period" applicable to said photoplay. In the event of the continuance of such event or events for a period or aggregate of periods in excess of four (4) weeks while said photoplay is in production, then and in either of said events either the artist and Industries or the producer, at their or its option, may elect to terminate the artist's employment hereunder; provided, however, that should the artist and Industries desire to elect to terminate the artist's employment hereunder they shall serve notice

of such desire upon the producer, and if the producer should not resume the payment of such installment or installments, if any, as would be payable to Industries hereunder in the absence of the happening of such event or events, commencing as of not later than two (2) days after the receipt of such notice from the artist and Industries, then and in that event the employment of the artist hereunder shall be terminated. If the producer should resume the payment of such installments, commencing as of not later than two (2) days after the receipt of such notice, then and in that event the employment of the artist hereunder shall not be terminated, but shall continue in full force and effect. In the event of the termination of the employment of the artist hereunder pursuant to the provisions either of this paragraph 7 or of paragraph 6 hereof, the producer shall be released from the obligation to pay any install- [143] ment or installments of compensation to Industries accruing hereunder after the date of such termination.

8. It is distinctly understood and agreed by and between the parties hereto that the services to be rendered by the artist under the terms hereof, and the rights and privileges granted to the producer by Industries under the terms hereof, are of a special, unique, unusual, extraordinary and intellectual character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an ac-

tion at law, and that a breach by the artist and/or by Industries of any of the provisions contained in this agreement will cause the producer irreparable injury and damage. Industries hereby expressly agrees that the producer shall be entitled to injunctive and other equitable relief to prevent a breach of this agreement by the artist and/or by Industries. This provision, however, shall not be construed as a waiver of any other rights that the producer may have in the premises, for damages or otherwise. Any failure on the part of Industries to perform and/or comply with its obligations hereunder or any failure, refusal or neglect on the part of the artist to perform any of the obligations and/or agreements which Industries agrees will be performed by the artist hereunder, will hereinafter for convenience be referred to as a "breach". No unintentional act on the part of the artist shall constitute a breach hereof unless the artist has theretofore committed the same unintentional act and has been advised that the same is grounds for a breach. In addition to all other rights and remedies which the producer may have, the producer, at its option, in the event of any breach, shall have the right to refuse to pay Industries any compensation during the continuance of such breach. The producer shall have the further right at any time during the continuance of such breach, to terminate this agreement. The producer shall have the further right, at its option, at any time during the continuance of such breach, to complete said photoplay with an-

other person in said role. If because of any breach the employment of the artist shall have been terminated hereunder, all installments of compensation paid by the producer to Industries hereunder prior to such termination shall be repaid by Industries to the producer on demand. Each and all of the several rights, remedies and options of the producer contained in this agreement shall be construed as cumulative and no one of them as exclusive of the others or of any right or priority allowed by law.

9. No waiver by the producer of any breach of any covenant or provision of this agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant or provision.

10. All notices which the producer is required or may desire to give the artist or Industries or both may be given by addressing the same either to Industries or the artist, or both, in care of Frank Joyce-Myron Selznick, Ltd., 9460 Wilshire Blvd., Beverly Hills, California, or by addressing the same to such other address as may be designated from time to time in writing by Industries or the artist, and in either case by depositing the same so addressed, postage prepaid, in the United States mail at Los Angeles, California; or by delivering the same so addressed to any telegraph or cable company, or, [144] at its option, the producer may deliver such notice as it is required or may desire to give the artist or Industries to the artist personally or

to any officer of Industries either in writing, or unless otherwise specified herein, orally. If the producer elect to mail such notice or to send the same by telegraph or cable then the date of mailing thereof or the date of delivery to the telegraph or cable office, whichever method may be selected by the producer, shall be the date of the service of such notice. Notice given either to the artist or to Industries as aforesaid shall for all purposes be and be deemed to be notice to both the artist and to Industries.

11. The artist shall provide, at his own expense, such modern wardrobe and wearing apparel as may be necessary for the role to be portrayed by the artist hereunder; it being agreed, however, that should so-called character or period costume be required, the producer shall supply the same. The costumes, apparel and other articles furnished or paid for by the producer, pursuant to the terms of this agreement or otherwise, shall be and remain the property of the producer, and shall be returned promptly to it.

12. Should the artist be required to perform any services hereunder in any place other than the city of Los Angeles, California, or its environs, the producer shall pay for and/or furnish the necessary and reasonable food, lodging and transportation (including drawing room, when available) reasonably required for the artist and the artist's valet on account of the rendition of such services.

13. On condition that the artist and Industries shall fully and completely keep, perform and observe each and every term, covenant and condition of this agreement on their parts to be kept, performed or observed, the producer agrees that on the screen and in advertising and paid publicity issued by the producer in connection with said photoplay the name of the artist will appear ahead of and in type larger than the name of any other member of the cast except Fredric March, it being understood that the producer may place the name of Fredric March ahead of the name of the artist and in type as large as that used to display the name of the artist. Nothing herein contained shall be construed so as to prevent so-called "teaser" and/or special advertising, publicity and/or exploitation relating to the story upon which said photoplay is based, any of the members of the cast, the director, the author, or similar matters, without mentioning the name of the artist, or so as to prevent so-called "trailer" or other advertising on the screen without mentioning the name of the artist, and no casual or inadvertent failure to comply with the provisions of this paragraph shall constitute a breach of this agreement.

14. The producer agrees to pay Industries for all rights herein granted and/or agreed to be granted to the producer and for the full and complete performance by the artist of each and all of the obligations and agreements which Industries agrees

will be performed by the artist, the sum of sixty-five thousand dollars (\$65,000.00). Said compensation shall entitle the producer to the exclusive services of the artist in connection with said photoplay for a period of five [145] (5) weeks from and after the date of commencement of the services of the artist therein, exclusive of the period or periods of the continuance of any of the contingencies referred to in paragraphs 6, 7 and 8 hereof. Said period of five (5) weeks is the period hereinabove referred to as the "specified period". Said compensation shall be payable in installments at a weekly rate equivalent to thirteen thousand dollars (\$13,000.00) per week; the first installment to be paid on January 16, 1935. Should the portrayal of the artist's role in said photoplay be completed (including his services in retakes, added scenes, etc.) prior to the payment to Industries of the full compensation payable by the producer for the entire "specified period" the entire unpaid balance of such compensation shall be payable to Industries upon the completion of said role. Should the artist's services in the portrayal of his role in said photoplay be required by the producer after the "specified period" applicable to said photoplay, compensation for such time thereafter as the artist's services are required by and actually rendered for the producer shall be payable to Industries in respect of said photoplay at the rate of thirteen thousand dollars (\$13,000.00) per week. If after the ordinary completion of the

artist's role in said photoplay the producer should desire the additional services of the artist in the making of retakes, added scenes and/or changes in connection with said photoplay, Industries agrees that the artist will render such services for the producer at such time or times as the producer may require as such services are required before the expiration of said "specified period"; and Industries further agrees that the artist will render such services at such time, or times, as the producer may require after the expiration of said "specified period", unless other engagements of the artist shall prevent, but Industries agrees that if otherwise engaged, Industries and the artist will co-operate with the producer to the fullest extent in the making of such retakes, added scenes and/or changes. Industries further agrees that after the ordinarily completion of the artist's role in said photoplay, the artist will remain in and about the vicinity of Los Angeles for a reasonable period for the purpose of rendering such services as may be required by the producer in the making of retakes, added scenes and/or changes. Compensation for such additional services rendered in respect of said photoplay after the expiration of the "specified period" shall be payable at the same weekly rate as herein specified, which compensation, however, shall be payable only for the days on which the artist's services are actually required by and rendered for the producer in the making of such retakes, added scenes and/or

changes, provided, however, that if the ordinary photographing of the artist's role is completed prior to the expiration of said specified period, the producer shall be entitled to the services of the artist for the balance of said specified period in retakes, added scenes, changes, etc., without additional charge. In computing all weekly compensation payable to Industries hereunder for services rendered by the artist for less than a full week the weekly rate shall be prorated and for this purpose the daily rate shall be one-sixth of the weekly rate. All compensation hereunder shall be payable to Industries, and the producer shall not be obligated to make any payments of any kind directly to the artist, and Industries hereby agrees to indemnify and hold the producer harmless of and from any and all claims of the artist for the payment directly to the artist of any compensation [146] herein provided for. Notwithstanding anything elsewhere herein contained, it is agreed that if the artist during the term hereof renders his services for others in connection with retakes, added scenes, changes, etc. in any photoplay in which he has heretofore appeared for others (which the artist can only do with the written consent of the producer first had and obtained) then and in that event the specified period hereinabove referred to shall be extended for the number of days during which the artist so renders his services for others.

15. The term hereof shall commence on or about January 14, 1935, and shall continue thereafter for such time as the producer may require the services of the artist in the portrayal of said role.

16. Industries hereby guarantees the full and faithful performance by the artist of each and all of the covenants and agreements which Industries under the terms hereof agrees will be performed by the artist. It is expressly understood that Industries shall not have the right to transfer or assign all or any of its rights or obligations hereunder, without the written consent of the producer first had and obtained.

17. Industries hereby represents and warrants to the producer that neither Industries nor the artist is under any contractual obligations of any kind to any person, firm or corporation which will or might prevent, conflict or interfere with the full and complete performance by Industries of each and all of its obligations and agreements hereunder and/or by the artist of any of the obligations and/or agreements which Industries agrees will be performed by the artist hereunder or which will or might prevent, conflict or interfere with the exercise and enjoyment by the producer to the fullest extent of each and all of the rights herein granted to the producer.

In Witness Whereof, the parties hereto have exe-

cuted this agreement the day and year first above written.

TWENTIETH CENTURY
PICTURES, INC.

By (signed) WM. GOETZ
MOTION PICTURE AND
THEATRICAL INDUSTRIES,
LIMITED

By (signed) LOYD WRIGHT

[147]

As an inducement to Twentieth Century Pictures, Inc. (hereinafter referred to as "Twentieth") to execute the foregoing agreement between Twentieth and Motion Picture and Theatrical Industries, Limited (hereinafter referred to as "Industries") and as a material part of the consideration moving Twentieth to enter into said agreement, the undersigned hereby consents to the execution of said agreement by Industries and agrees to be bound thereby. Specifically, but without in any way limiting the generality of the foregoing, the undersigned expressly agrees that he will fully and faithfully keep and perform each and all of the services, obligations and agreements which, under the terms of said agreement, Industries agrees and guarantees will be kept and performed by the undersigned, as fully and to the same extent as though said agreement were made solely between Twentieth and the undersigned and as though the compensation pay-

able by Twentieth under said agreement were to be paid directly to the undersigned, and the undersigned agrees that he will keep and perform any and all agreements, duties and obligations assumed by Industries under said agreement so far as the full performance thereof necessitates that the undersigned do or refrain from doing any act or thing. The undersigned hereby expressly authorizes Twentieth to pay all compensation accruing under the foregoing agreement, directly to Industries, and hereby releases and discharges Twentieth of and from any and all claims and demands of every kind which the undersigned may have for the payment to the undersigned of any compensation accruing under said agreement or for any services rendered by the undersigned in connection with the photoplay referred to therein. The undersigned further hereby joins in and reaffirms as his own each and all of the representations and warranties made by Industries under the terms of the foregoing agreement, and further hereby guarantees to Twentieth the full and faithful performance by Industries of each and all of its obligations and agreements under the terms of said agreement.

Dated: December 21st, 1934.

(signed) CHARLES LAUGHTON

[Endorsed]: U. S. B. T. A. Stipulation of Facts.
Filed at hearing. June 27, 1938. [148]

